Regestum Practicale:

Or, the Practical

REGISTER,

Consisting of

RULES, ORDERS,

AND

OBSERVATIONS

Concerning the COMMON-LAWS, and the Practice thereof.

But more particularly applicable to the Proceedings in the

UPPER-BENCH,

As well in matters Criminal as Civil.

Taken for the most part, during the time that the late

Lord Chief Justice ROLLE

Did sit and give the Rule there.

By WILLIAM STYLE of the Inner-Temple Esq;

Alphabetically digested under several Titles.

With a TABLE directing to the ready finding out of these Titles.

Semper ego Auditor tantum? Nunquam ne reponam? Juvenal. 1. Sat.

London, Printed by *A. M.* for *Charles Adams*, at the Talbot neer Saint *Dunstans* Church in Fleet-Street. 1657.

UMI

To the Honorable

JOHN PARKER,

One of the Barons of his Highneſs the Lord PROTECTORS Court of *Exchequer*.

William Style wiſheth the confluence of all Temporal Proſperity here, and Eternal Felicity hereafter.

SIR,

VErbum Sapienti ſat eſt, *is a ſaying, as equally True, as Ancient; and therefore I need not (here) uſe many,*

neither will I, especially at this time, wherein your Serious thoughts are (I presume) more then usually busied in matters of High and Publike concernment, and ought not to be interrupted with Private, and matters of slight moment. In breif therefore I humbly present to your View and favourable acceptance, this small Collection of some Remarkable things, chiefly concerning the general Practice of the Common Laws, but more particularly relating to the manner of proceeding used in the Court of the Upper-Bench, *observed and taken by mine own hand*

hand during my constant attendance at that Bar, for some years last past. I was the willinger to give way to this publication, that I might make it more visibly appear that I am not ashamed of my profession, but dare do something in order thereunto, in this very Age wherein our Laws are so much undervalued and traduced by many, the practicers thereof so much slighted, and the very practice it self is sunk to so low an ebb. And I am humbly bold to fix your name in the Front of it, that I may (in some measure) revive the drooping spirits of many cast down with the sad consideration

on of the uncertain event of things by letting them see that there is not so great cause of doubts and fears, as they timorously phancy, since we are not yet destitute of grave Sages and Fathers of our Laws, men of Wisdome and courage, that are not onely (themselves) ready to appear in their just defence and maintenance, but also to cherish & give encouragement to the honest (though weak) endeavours of the meanest professors thereof.

Sir, in having the happiness to be by birth your Countryman, and almost of the same neighborhood; I am thereby the better known to you, and I receive no small con-

tent

tent therein, but more especially when I consider how much your Country and profession is honored in you, and that you possess so high a place of Dignity, in that very Court where a neer Ancestor of mine (with modesty be it spoken) did for many years sit and dyed a Baron. These things, with my recollected thoughts, of those many Civilities I have formerly received from you, do induce me to hope, you will gently pass by the many defects: you may (perchance) herein meet withal, and which may (justly) render the Worke unworthy of your approbation or protection, and with such favor

to

to entertain it, that I may be (thereby) hereafter emboldened to present you with some other of my labors, that may prove more worthy of you, and may more fully answer the expectation and desires of many.

Inner Temple, Oct. the 20. 1656.

To

THE PREFACE TO THE READERS,

To whom it doth or may any wayes concern.

MAny and frequent have been the clamors of some infatuated Spirits of this distempered Age, who (like the Divel, that Arch enemy to all good Government and Order) labor to bring all things into confusion; yea (if possible, into the Original Chaos againſt the Common Laws of this Nation, and the practice thereof. I must confess their pretences, though they are as false as malicious, do yet seem specious and fair in appearance, and are too apt to take with the vulgar and ignorant, and no wonder, for they (*Athenian*-like) pleased with novelties,

ties, and constant to nothing but inconstancy, are ever thirsting after change and alteration (though to the worse) as children long to vary their Sports, and shift their Toyes and Baubles. It is true, that all Creatures (man onely excepted) do observe the Rules of Nature, prescribed unto them in a constant and setled way, but he by his fall did loose that perfection, and hath (thereby) not onely subjected the Creature, but himself to vanity and vexation of Spirit: this is not onely true of man, in his *puris naturalibus*, but even of those whose Souls are hightened above the common pitch, by civil education, and good literature; yea even of Gods dear children who have those extraordinary Characters of his strength and goodness fixed upon them, and see things with a clearer light then meer Nature improved to the utmost can afford: So truely may that Ancient and common saying, be applyed to all, *Mens humana novitatis avida.* That therefore many things are (oftentimes) disliked and inveighed against, even by well-meaning, and (otherwise) discreete men, is no sound conclusion, that they are naught and fit, either to be abolished or reformed, but that mens minds are unsettled and restless, and not long to be satisfied with any thing, be it (in it self) never so excellent and desirable.

This

This truth is abundantly manifested by *Solomon* the wisest and greatest of men of his Age (if not of any since) in his book called the Preacher, c. 1. and 2. These things considered (though in my Judgement, who have for this six and thirty years last past and upwards, been a Student of the Common Laws, and for a great part of that time, carefully observed the general practice thereof; yea, I believe also of many more, far more ancient in time, and of far deeper judgments, and more eminent in parts then my self) there is not to be found, either in the Laws themselves, or in the practice thereof, any such considerable inconveniences, or of such dangerous consequence as hath been, and yet is (by some) pretended, I do not think it strange to have heard so loud cryes, and calumnies, of late falsly voiced and printed against them. Endeavors and expedients have been prudently studyed, and warily put in practice, by the Grave and Learned Judges and Sages of this Nation, to give satisfaction unto, and to prevent greater mischiefs (if possible) which might arise from the unsetledness of this *Nulli-legian* brood, by ordering and regulating as much as might be (without impairing the excellencies of the Laws themselves, and the due and ready ad-

administration of equal Justice) those things against which (they conceived) there was or could be any colour or shadow of exception; but how these men have been satisfied therewith, or whether the people have received (thereby) that general benefit, as was supposed, I leave to the Learned to judge, and to those that have made experience thereof. For my own part, I must confess I cannot yet conceive (alwayes submitting to better Judgements) that our Common Laws, and the practice thereof, which are of so great antiquity, and have been from Age to Age to this present time refining and working into this modle, and so happily continued, not only to the good and flourishing of this Nation in our own Country, but to the making of us (thereby) famous and renowned through the whole Christian World, can admit of a suddain alteration for the better, but do rather fear that experience will in time manifest (if it doth not already too much appear) that as great, if not greater inconveniences may fall out to the people by those alterations that have been already made, then there did usually happen before they were undertaken and put in practice: So difficult, nay so dangerous a thing it is on the suddain, and by the advice

vice of a few, though Learned and discreet men to better that which hath been the study, and constant endeavor of many Ages to bring to that excellency, perfection, and beauty, in which the judicious, with joy and content, do behold it to appear. I speak not this to reflect upon the judgements or actions of those that have assayed any thing in this kind, I know they are placed in many Orbes above me, and may see much further, and will therefore rather conclude my self to be short sighted in apprehending, then say there hath been any mistakes in the not right stating of things; Nor do I hope thereby to stop the clamorous mouths of the malicious and ignorant, for this would be as much folly, as *Surdo canere*, or to present colors to the blind to distinguish of; when their impudence is grown less, and their knowledge greater, it will be then (and not till then) a fit time to bespeak them with reason, till when I leave them. But my desire and intentions herein are in part to settle the wavering minds of such, who though they are not over-swayed with a prejudicate opinion, or so much raised with self-interest, to run clean beside the fair mark of good Laws, Order and Government, may yet be unresolved in their judgements, what

to determine concerning those Laws and the practice thereof, which have been (of late) without any restraint, so much vilified and despised; And this is also one cause which moved me to give way to the publishing of this ensuing Treatise, that they may thereby receive information, not from me, but from the Oracles of the Law, the grave and Learned Judges of the *Upper Bench*, and more particularly from the mouth of that upright stout and polished Pillar of the Law, the late Lord Chief Justice Rolle, what the Law and the practice thereof is and hath been for these latter years, yea even at that very time, wherein they were so much, and so falsly clamoured against, wherein I doubt not but there may be found to be by those that will and can understand it, so much reason, and such universal and impartial Justice in the Laws themselves, and so much care and circumspection, daily used in the general practice of them, for the equal and speedy distribution thereof, that they shall not need a Champion to stand up in their vindication. As for those miscarriages which do sometimes (and it may be too often) fall out in the retarding of Justice to the prejudice of the Clyents, I dare say, that they are usually occasioned, either by their own negli-

negligence or wilfulneſs, and are not to be charged upon others; and for thoſe that do befall them other wayes, either by the ignorance, or falſity of thoſe they intruſt, which ſo long as man is but man, may ſometimes be; you will find that they are no ſooner diſcovered and complained of in the right place, but they are rectified, and (if there be cauſe) the offences exemplary puniſhed, and all poſſible care that may be (from time to time) taken to prevent and meet with the like inconveniences for the future; ſo far are and have bin the Sages of the Law at all times from countenancing or tolerating any thing, that may ſtop or obſtruct the ſtream of Juſtice from flowing readily and indifferently to all. For the Book it ſelf, I cannot call it a perfect Work, you ſee I aver it to be no more then a few years Collections and Obſervations thereupon, and indeed they were onely taken for private uſe, without any thoughts of making them publike, yet ſuch as it is I conceive it may not altogether prove uſeleſs; for it being the firſt eſſay of this nature that I find endeavoured or put forth by any, it may, if it may nothing elſe, at leſt encourage others hereafter, to make a further progreſs in this kind (now that the way is pointed at) then the ſhort ſpace of time,

allotted me to travail in, hath ſuffered me to do, and to add heaps to my gleannings, and to nouriſh up this my Babe to ſuch a growth and perfection, that it may, (happily) when I am gone, forget its firſt Parent, and own another name and Author, as I have known ſome books to have done. It may alſo be (probably) ſome direction to thoſe that begin to practice at the Bar, but eſpecially in the Court of the *Upper Bench*; how to practice fairely, and with ingenuity, and to make motions, befitting the honor and wiſdome of the Court to grant, and may ſtand with modeſty and diſcretion, in relation to themſelves to move, and not frivolous and uſeleſs, yet chargeable to the Clyent, and though it be not worthy to be an Inſtructer to the long experienced, and ready practicer, to whom I preſume few things of this kind can prove new and unheard of; yet way it (perchance) at ſome time or other, be their remembrancer of thoſe things (though but ordinary) which multiplicity of buſineſs will not ſuffer them on the ſuddain to call to mind, a thing which I have often obſerved to befall many able and well-verſed practicers, and no wonder, for the beſt memories do often prove treacherous. I have made it my buſineſs to

obſerve

observe with diligence, and to render with candor, not mine own, but the sence of the Court in all things, and as neer as I could in the very words they were delivered, yet (many things being spoken *obiter*, and all men subject to mis-apprehensions, and my self (it may be) as much as others. I will not labor, either to free the book (wholly) from errors, nor my self from mistakes, but leave both to the Readers candid construction and censure. Thou maist perchance think it strange that so ample a subject as the Title of the book sets forth, should swell it to no bigger a volume; and also ask me why upon many of the heads in the book, which in themselves do afford such copious matter, I am so brief and concise. For the first know, that my pretentions are not (as thou mayest see in the very Title of the Book, and through the whole Book it self, and which I have also already hinted unto thee) to give thee a compleat Collection of all things, belonging to each head, which I do finde and have read, delivered *Sparsim* in our Books, but onely the substance of such things, which I have heard and taken with my own hand at the Bar for some years last past, much whereof, I am confident thou canst not find elsewhere in

print, and this is also in the second place the true reason why upon some of the heads I am so short which might have been expected, would have been far larger, for as things were (occasionally) from time to time delivered by the Court, so were they taken, and so are they offered unto thee, and not otherwise, saving my endeavors to explain some things which by reason of the short delivery of them, seemed more obscure then others, and that not onely for the easier understanding of the younger Student, but also (if it were possible) to satisfie those great Antagonists of the Law and the practice thereof (who have need to have things made very plain and easie to them) how much they have been out of the way in their vilifying and laboring to destroy that which is so excellent in it self, and by which (next under God) we are not only continued to be a people, but are also rendred a peaceful and a flourishing Nation, and which I am confident mauger the malice of those that wish and hope the contrary, will remain and flourish amongst us, untill for our sins God shall say (which I hope in his mercy he will not) I have no pleasure in you, but shall suffer a Foreign enemy (as hath been heretofore done) to take away not onely

onely our Laws and Liberties, but our Land and Nation. If any ſhall ſay that my own intereſt hath warmed my zeal to this temper, and renders what I have ſaid ſuſpicious of belief, I muſt anſwer them that I am indeed of the profeſſion of the Law, and I am not aſhamed of it, for I believe it to be not only an honeſt but an ingenious and honorable calling, and (in it ſelf) not mercenary, as it is by ſome ſaid to be, and too corruptly alſo ſo made by many others: but for the advantage I have hitherto made by it, or believe I ſhall ever do, in the way of profit, I might and may yet as eaſily be contented it ſhould be taken away as moſt, if not any of them, that cry ſo loudly againſt it; onely (I believe) with this difference, I deſire to keep that title *Quelque choſe*, that I have of mine own, *pur faire bouillir la marmite*, as the *French* ſaying hath it, and with which, I am I thank God contented under the protection of the Laws, and they to get what they have not from others, *jure ſive injuria*, it matters them not, and that there may be no Law to check or puniſh their unbridled deſires and unlawful actions; did not then the enſuing Treatiſe abundantly prove the truth of that litle I have ſaid in defence of our Laws and the practice thereof, I ſhould not doubt but my ſingle and bare

averment of a truth so well known unto many would sooner be believed, then their many foul calumnies, speaking their own interests, though in disguised and fair words and pretences. I shall say no more, but leave what I have said to thy judicious consideration, and the Book to thy serious perusal and favorable acceptance.

From my Study in the Paper buildings in the Inner Temple, July the 1. 1646.

William Style.

THE

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Errata.

In the Preface.

Page 5. line 27. for *raiſed* read *Byaſed.*

PAge 19. line 25. dele *agreement.* p. 49. l. 8 read *breach.* p. 50. l. 26. r. *whereof.* p. 51. l. 19. r. *are to be delivered to the Judges.* p. 62. l. 9. r. *and in what.* p. 64. l. 25. r. *for.* p. 68. l. 7. r. *if it.* p. 78. l. 27. r. *him.* p. 81. l. 7. r. *ſuch.* p. 92. l. 11. r. *wiſe.* p. 93. l. 4. r. *forme.* l. 23. r. *exact.* p. 103. l. 33. r. *let.* p. 106. l. 4. r. *an.* p. 106. l. 32. r. *they.* p. 123. l. 28. r. *Laws.* l. 33. r. *contemporanea.* p. 127. l. 26. r. *to a.* p. 141. l. 23. dele *a.* p. 145. l. 3. r. *that there was ſuch an enrollment.* p. 147. l. 6. r. *to the uſe.* p. 150. l. 9 dele *doth.* p. 151. l. 28. r. *the.* p. 156. l. 27. r. *behaviour.* p. 163. l. 5. dele 23. p. 173. l. 14. r. *be.* p. 178. l. 26. r. 24. *Car.* p. 192. l. 22. r. Q. *Whether if an iſſue.* l. 24. for : r. ? p. 207. l. 15. r. *and are preſumed.* p. 209. l. 23. r. *into the Office.* p. 225. r. *this.* p. 211. l. *ult.* r. *caſes.* p. 240. l. *ult.* r. *the.* p. 246. l. r. *the.* p. 242. l. 3. dele *if* p. 243. l. 13. r. *chief.* p. 248. l. 35. r. *although.* l. 29. r. *go to a tryal.* p. 253. l. 17. r. *the.* p. 258. l. 7. *former.* p. 270 l. 6. r. *whither.* p. 275. l. 1. r. *writ.* l. 2. r. *by a.* l. 6. r. *there.* p. 276. l. 22. r. *only his.* p. 290. l. 23. r. *not.* p. 303. l. 22. dele *the.* p. 304. l. 22. r. *the.* p. 307. r. *him.* p. 311. l. 3. r. *a good.* p. 315. l. 8. *of* p. 319. l. 29. r. *King.* p. 331. l. 12. r *muſt.* p. 342. l. 8. r. *a confined.* l. 26. r. *between* p. 339. l. 11. r. *if it be.*

THE

Reader, theſe Books following, are Printed for *Charles Adams*, and are to be ſold at his ſhop at the Talbot in *Fleet-ſtreet*.

A Treatiſe of Religion and Learning, and of Religious and Learned men; in Alphabetical order, a Work ſeaſonable for theſe times, wherein Religion and Learning have ſo many enemies: By *Edward Leigh* Eſq; Maſter of Arts of *Magdalen* Hall in *Oxford*. In Folio.

A Philological Commentary; or an illuſtration of the moſt obvious and uſeful words in the Law, by the aforeſaid Author, *Edward Leigh* Eſq; 8°.

Reports of that Learned and Judicious Clerk, *John Gouldesborough* Eſq; ſometimes one of the Protonotaries of the Court of the Common Pleas, being his Collection of *Chocie* Caſes, taken in the latter years of Queen *Elizabeth*, with the Judges Reſolutions thereupon: Publiſhed by *William Style* of the Inner Temple Eſq; in 4°.

The *French* Cook, preſcribing the way of making ready all ſorts of Meats, Fiſh, and Fleſh; with their proper Sauces; Together with a Treatiſe of Conſerves, and the whole skill of Paſtry-Work: Engliſhed by *J. D.* Gent. In 12°.

The Innocent Lord, or the Divine Providence, being the Incomparable Hiſtory of *Joſeph*; Engliſhed by Sr *William Lower*. In 8°.

Grati Falicii Cynegeticŭ, or a Poem of Hunting, by *Gratius*, the *Faliscian*, Englished and Illustrated by *Christopher Wase* Gent, In 12°.

Moral discourses and Essays upon several select subjects, by *Thomas Culpeper* Esq; 12°.

A Learned discourse of Ceremonies, by the Right Reverend Father in God, *Lancelot Andrews*, late Bishop of *Winchester*, In 12°.

An Answer to two Letters, the one of a Papist, the other of a Presbyterian, by *Tho. Swadling*, Dr. in Divinity, In 4°.

New Errors made palpable by an Old Light, or a cheap and easie way to cure the dissentions of the times, by *Anthony Norwood* Esq; In 12°.

A short and plain Catechism, Instructing a Learner of Christian Religion, what he is to believe and what to practice.

The Practical Register, being Rules, Orders, and Observations, concerning the general practice of the Law, but more especially the way of practice in the Court of the *Upper-Bench*, by *William Style* of the Inner Temple Esq; In large 8°.

THE Practical Regiſter.

Atturney.

EVery Atturney of the Upper Bench, ought to attend in the Court at the ſecond return of the Term, by the Ancient Rules of the Court, for the quicker diſpatch of Juſtice to be done to the people; and for that reaſon, if they did not, they were to be put out of the Roll: and it was then Ordered that the Ancient Rules of the Court for Regulating of the Atturnies in their practice, ſhould be renewed and ſet up in the Kings Bench Office, *Hil.* 21. *Car. Banc. Reg.*

One may not repeal a Warrant of Atturney given to an Atturney to appear for him, to the intent to defraud the Plaintiff of his appearance, but the Attorney ought by the Rules of the Court to appear for him, according to the Rules of the Court, not-

withstanding his Warrant be so repealed, *Trin.* 22. *Car. B. r.*

If an Atturney do practice deceitfully, an Attatchment lies against him out of this Court, at the prayer of the party grieved, if he make it appear to the Court, and good costs shall be given against him, 22. *Car. B. r.*

An Atturney and his Clerk were both committed by the Court for entring things against expres Rules of the Court, and after notice of those Rules given them by the Atturney of the other side, 22. *Car. B. r.*

One Atturney ought not to suffer another Atturney to practice in his name, by reason of many inconveniencies that often happen to the Clyents by this means, 22. *Car. B. r.*

One *G. H.* an Atturney was ordered to be put out of the Roll of Atturneyes, for entring a judgement against an expres Rule in Court, *Mich. Car.* 22. *B. r.* but it was not done.

The proper place for the Atturney General to sit upon any special matters, wherein his attendence is required in Court, is under the Judges, on the left hand of the Clerk of the Crown, *Mich.* 22. *Car. B. r.*

No Under Sheriff ought to be Atturney, for it is often the cause of encreasing of Suits, and also a hindrance in dispatch of Clyents causes, *Trin.* 23. *Car. B. r.*

If the Atturney of the Plantiff or Defendant do dye hanging the Suite, and the other party whose Atturney is dead, have notice given of it, and will not retain another Atturney to prosecute for him, the other party may proceed, and is not bound to hinder his Clyents cause for it, *Mich.* 23. *Car. B. r.*

The

The Plaintiff or Defendant may change his Atturney pending the Suite, without leave of the Court, but it is not fair practice to do it without just cause, *Mich.* 23. *Car. B. r.*

It was the old course in proceeding in an Action of Trespass and Ejectment, to deliver the Lease of Ejectment to the party to whom the Plaintiff had made a Letter of Atturney to execute the Lease, and for the Atturney to deliver possession of the Land, upon the delivery of the Lease, *Pasc.* 24. *Car. reg.*

If one have a Letter of Atturney to deliver a Deed to another, and also authority from the party by word of mouth to do it, he may make use of which of these he will to do it by, but not of both, for the first that he makes use of shall be effectual, and the other shall be void, *Pasc.* 24. *Car. B. r.*

An Infant ought not to appear to an Action by an Atturney, but by his Guardian; for he cannot retain an Atturney, but the Court may assigne him a Guardian, *Pasc.* 24. *Car. B. r.*

The Atturneys ought to be ordered in the ordinary manner of their practice by the Master of the Office, and if differences arise betwixt them concerning it, he is to hear both parties, and to order the matters in difference betwixt them, and they are to submit to him, *Pasc.* 24. *Car. B. r.* and the Court is not to be troubled but in extraordinary and difficult matters.

If there be divers Defendants declared against in one Declaration, the Atturney in the cause on the Defendants part, cannot be compelled to appear for more of the Defendants; then for those from whom he hath Warrant to appear, 24. *Car. B. r.*

If one retain one by Warrant to be his Atturney

in a Suite depending against him in this Court, he may appear for him by that Warrant in all Suites which are there depending against him, *Hill.* 1649. *B. Sup.*

Attorneys ought to be of some Inns of Court or Inn of *Chancery*, and not to lodge in Inns or Alehouses, or in private places, By *Rol* chief Justice, *Hil.* 1649. *B. Sup.* 8. *Feb.*

Attorneys of the Upper Bench, ought to be allowed in all Circuits as the Attorneys of the Common Pleas are, although it hath been denyed them in the *Western* Circuit and ought not to be compelled to pay extraordinary Fees for practising there, *per Rolle Pasc.* 1650. 1. *Mail. vid.* 1. *H.* 7. *f.* 12. *a.* that the Attorneys of the Upper Bench are not Attorneys upon Record, *Ergo quare.*

An Action upon the Case lyes for the Clyent against his Attorney, if he plead a Plea for him, for which he hath not his Warrant, *Hil.* 49. *B. Sup.*

The Attorneys of this Court were ordered from hence forth to be sworn as the Attorneys of the Common Pleas are. by *Rolle Pasc.* 1650. 1. *Mail B. Sup.*

One cannot force an Attorney to be his Attorney against his will, by *Rolle Chief Justice.*

One may be an Attorney for a Clyent upon Record and yet another Attorney may act all the business for this Clyent.

An Attorney that hath Warrant to appear for his Clyent, may plead for him without another Warrant, by *Rolle Chief Justice.* See *Q.* for divers Clerks in Court said privately that he cannot plead no any other Plea for his Clyent without a special Warrant, but a *non fuit informatus.*

If an Attorney dye pending his Clyents cause, his Warrant of Attorney is determined, and his Clerk may

may not proceed in the Suite without another Warrant, by *Rolle Chief Juſtice.*

Actions.

There ought to be both apparent malice in the Defendant, and prejudice alſo done to the Plaintiff to ground an Action upon the Caſe upon, or elſe it will not lye; for if there be only malice and no dammage done by it, there can be nothing recovered, and ſo the Action will be vain and to no purpoſe; and if there be only dammage and no malice, it is but *damnum ſine injuria*, and not puniſhable by Law, *Hill.* 21. *Car. B. r.*

Where there are two ſeveral dammages done to the party, he ought to have two ſeveral Actions, and not to joyn them in one Action. Entred *Oct.* 156. 20. *Car. Hill.* 21. *Car. B. r.*

Although dammage without wrong will not maintain an Action, nor malice without dammage, yet malice may aggravate the dammages recoverable, where there is dammage and wrong meeting together, *Hill.* 21. *Car. B r.*

Where two Actions, though of ſeveral natures do depend one upon the other, the abatement of one of the Actions is the abatement of both, *Hil.* 21. *Car. B. r.*

In an Action upon the Caſe, grounded upon a promiſe; the Declaration is *Actio in ſuper caſum* in the ſingular number, although the Action be brought upon divers promiſes, for the word Caſe includes all, 21. *Car. B. r.*

An Action brought againſt a Conſtable for a thing done by him by vertue of his Office ought by the Statute, to be brought againſt him in the

County where he is Constable, and not else where, 21. *Car. B. r.*

A Transitory Action may be laid in any County at the will of the Plaintiff, yet generally (and it seems the better and more indifferent course so to do) it useth to be laid in that County where the cause of Action did first arise, *Mich.* 22. *Car. B. r.*

Transitory Actions ought not to be brought within Corporations, for their priviledges do properly and onely extend for the tryal of such Actions, the causes whereof do arise within their own jurisdictions, *Mich.* 22. *Car. B. r.*

Either an Action upon the Case, or an Action of Detinue at the Election of the Plaintiff may be brought for goods detained from him, 22. *Car. B. r.*

An Action of Trover and Conversion, is in its nature but an Action upon the Case to recover dammages, *Mich.* 22. *Car. B. r.*

An Action upon the Case, doth lye by the Statute against the Court of Admiralty, for holding Plea of a matter which is not within their jurisdiction, *Mich.* 22. *Car. B. r.*

Where a promise is made by a Fem Covert, or by a Servant, for the Husband or the Master, the Action for breach of this promise ought to be brought against the Husband or the Master; for it is their promise, and the Wife and the Servant are but instruments, *Mich.* 22. *Car. B. r.*

An Action upon the Case doth lye against one for speaking such words falsly and maliciously of another as if they were truly spoken of the party, he might be punished as a Felon, or by some Statute fined or imprisoned

prisoned, *Mich.* 22. *Car. B. r.* as for calling him Theef, *&c.*

There is a difference betwixt bringing of an Action, and the laying of Action, *Mich.* 22. *Car. B. r.*

It is cause sufficient to ground an Action upon the Case for one to put another to the trouble and charges to Sue for that which is his own, *Mich.* 22. *Car. B. r.*

The cause for bringing an Action upon the Case for the speaking of words against one, is the temporal loss or dammage which may accrew to the party against whom they are spoken, by the speaking of them, and not the words themselves, *Mich.* 22. *Car. B. r.*

An Action upon the Case doth lye for speaking of words against a man, by reason of which he lost his marriage, *Mich.* 22. *Car. B. r.*

An Action upon the Case doth not lie for Arrerages of Rent due upon a Lease for yeers, because the Law gives a proper Action for it, to wit, an Action of Debt, *Mich.* 23 *Car. B. r.*

Upon a promise made upon an *insimul computaverunt*, the party to whom the promise is made, may either have an Action of Debt, or an Action upon the Case at his Election, for the thing which was before in dispute and uncertain, is by the account and promise reduced to a certainty, *Mich.* 22. *Car. B. r.*

For a Debt certain referred, amongst other things to an Arbitration, an Action of Debt doth not lye, but an Action upon the Case, *Mich.* 22. *Car. B. r.*

It is not safe to be too particular or over curious in the laying of an Action, for it is often times a cause that the Action doth fail, *Hill.* 22. *Car. B. r.*

An Action upon the Case lies for calling one Whore in *London*, but this is by the special custome of the City, *Hill.22.Car.B.r.* yet 24. *Car. Pasc.* The Court was divided in opinion in this question whether an Action doth lye or not.

An Action upon the Case lies for a private *nusance*, but not for a publike, *Pasc.* 23. *Car. B.r.*

An Action upon the Case doth lie for scandal or for molestation, *Pasc.* 23. *Car. B.r.*

Where a Joynt Action doth lie against divers persons of whom some are known to the Plantiff, and the rest are not known unto him, the Action may be brought against them that are known by their particular names, and against them that are not known generally with a *Simul cum aliis*, &c. *Pasc.* 23. *Car. B.r.*

In a tryal upon a Trespas and Ejectment, or a Replevin touching the title of the Land in question, although the Verdict pass against the Plaintiff; yet he may bring a new Action for the same Land, for such tryals are not final, *Pasc.* 23. *Car. B.r.* because the Land is not recovered in them, but the possession.

In a Case betwixt one *Nichols* and *Webb* in the Common Pleas for calling the Plaintiff (being an Atturney at Law) Knave, a Verdict and judgement was given for him; and this judgement being afterwards removed by a Writ of Error into this Court; the Judgement was affirmed, *in Trin.* 12. *Car. Rot.* 102. *Pasc.* 23. *Car. B.r.*

An Action brought for Rent or breach of Covenant upon a Lease, may be laid either in the County where the Lease was made, or in the County where the Lands do lie, that are let by the Lease, *Pasc.* 23. *Car. B.r.*

Vexatious Actions are not favoured in Law, nor by

by the Court, but may be referred to the Master of the Office to consider of them, *Trin.* 23. *Car. B. r.*

A violent intendment may bring one within the compass of an Action, *Mich.* 23. *Car. B. r.* by *Rolle.*

One may in some Case bring an Action at the Common Law, for that for which he may also have his remedy in the Ecclesiastical Court, for the Common Law is to be preferred before the Ecclesiastical Law, where they stand in equal degree in respect of the matter to be tryed, *Mich.* 23. *Car. B. r.*

By a special customе an Action doth lie in some Cases in which at the Common Law no Action doth lie, and so was it adjudged, 8. and 13. *Car. Mich.* 23. *Car. B. r.*

The Kings Charter cannot enable the Pattentee to bring an Action which the Common Law allows not, *Mich.* 23. *Car. B. r.*

If one bring an Action upon the Case for divers words spoken, whereof some are Actionable and some of them are not yet the Action lies, *Trin.* 24. *Car. B. r.*

The Husband may bring an Action alone for scandalous words spoken against him and his Wife, and recover, and yet may afterwards bring another Action for to recover dammages done to his Wife, by the speaking of the same words, *Trin.* 24. *Car. B. r.* for the Husband and Wife are both particularly damnified by the speaking of the words.

An Action upon the Case doth not lie upon a contract which sounds in the realty *Q.* if the contract be mixt with other matters which are not in the realty, whether it will then lie or no? *Mich.* 24. *Car. B. r.*

If

If one take out a Latitat within the time limited by the Statute for the limitation of Actions; it is a good bringing of the Action in due time, and he is not barred by the Statute although he do no declare against the party within the time limited by the Statute, *Mich.* 1649 *B. S.*

An Action of the Case doth lie against one that doth Arrest another without cause, *Pasc.* 1650. 6. *Maii B. S.*

One may have an Action upon the Case against a Witness that is served with a *Subpœna* to appear at a tryal and doth not appear, but by the Statute, *Pasc.* 1650. *B. S.* 18. *Maii & 13. Nov.*

A Joint Action of the Case doth not lie against two several persons for speaking the same scandalous words, for the words of one are not the words of the other, but they must be severally spoken, and consequenly several Actions ought to be brought against them, but a Joynt Endictment doth lie in such a Case, 27. *Jan.* 1650. *B. S.* So ruled by the Court.

One may joyn two Debts due upon two several Obligations in one Action, and so it is of other personal Actions. but it cannot be done in real Actions, 6. *Feb.* 1650. *B. Sup.*

If a Carriers servant or his son conspire to rob the Carrier, and do rob him, the Carrier not being privy to the conspiracy; an Action will lie for the Carrier against the Hundred, where he was robbed, upon the Statute of *Wincheſter*: but this matter may be urged to the Jury upon the tryal in mitigation of dammages, by *Rolle Chief Justice.*

Amendment.

Original Writs are not amendable at the Common Law,

Law, for if the Writ be not good, the party may have another. *Hill.* 22. *Car. B. r.*

The leaving out of the Atturneys name in the Imparlance Roll is Amendable upon a motion made to the Court to have leave to do it, but not without leave of the Court; so that the Atturnys name be not left out in the Issue Roll, for then it is not Amendable. *Hill.* 21. *Car. B. r.*

If in a Replevin the Avowant do amend his Avowry before the Term and do pay costs, the Plaintiff ought to reply the next Term following, but if he pay not costs, he is not bound to reply the next Term. 21. *Car. B. r.*

Any fault in pleading which would be Amendable if the cause were depending in an inferior Court, may be amended where the cause depends in a superior Court, but not *è contra* 21. *Car. B. r.*

Where two several persons joyn in one Declaration, and one of them dye depending the Sute, the Declaration cannot be Amended, but the other party that survives must have a new Writ; for there is great difference betwixt a Joynt Action and a several. *Trin.* 22. *Car. B. r.*

A Plea may be amended upon giving of notice thereof to the other party, and paying of costs, if the Plea be only entered in Paper, but if it be entred in Parchment, it cannot be amended, for then it is a Plea upon Record. *Mich.* 22. *Car. B. r.*

The Court of the Kings Bench will not Amend a Transcript of a Record removed thither by a Writ of Error out of an inferior Court, but they will Amend a Record removed thither out of the Common Pleas, if they see cause. *Mich.* 22. *Car. B. r.*

If the Plaintiff desire to alter his Declaration, it is in the

election of the Defendant to take coſts of the Plaintiff, and to let him amend his Declaration, or to refuſe to take his coſts, and to Imparle to the next Term. 22, *Bar. B. r.* and 1650. *B. S.*

A Return upon a *Habeas Corpus*, or upon a *Certiorari* to remove Orders of Seſſions of the Peace, &c. cannot be Amended the Term after the Return is made, but it may be Amended the ſame Term in which it is made. *Hill.* 23. *Car. B. r.*

The Clerk of the Peace may Amend an Endictment removed into this Court at any time, during the Term in which it came in here, but afterwards it cannot be Amended. *Hil.* 23. *Car. B. r.*

The Plaintiff may Amend his Declaration though it be ſeven years paſt ſince he Declared, if it be but in Paper. *Hil.* 23. *Car. B. r.*

If the Plea Roll be rightly entred, though the *Poſtea* be miſtaken in the tranſcribing of it, yet the *Poſtea* may be amended. *Paſc.* 24. *Car. B. r.*

A Declaration grounded upon an Original Writ if it be erroneous cannot be amended, but if it be upon a Latitat or Bill of *Middleſex*, it may be amended, *Paſc.* 24. *Car. B. r.*

If a Tranſcript of a Record removed out of the Common Pleas into this Court, be to be Amended here, the Clerk in the Common Pleas is to bring in the Original Record out of the Common Pleas into this Court, that the Tranſcript may be here Amended by the Record it ſelf. *Trin.* 24. *Car. B. r.*

The Clerk of the Aſſizes may Amend the *Poſtea* by his Notes, if he be miſtaken, after that he hath returned it into this Court. *Trin.* 24. *Car. B. r.*

An Indictment removed into this Court may be amended the ſame Term it came in, but not afterwards

but

but upon ſome extraordinary matter, *Paſc.* 24. *Car. B. r.*

After the parties have joyned in Demurrer; the Demurrer may be Amended if it be but in Paper, *Paſc.* 24. *Car. B. r.*

A *Poſtea* may be Amended by the Record in ſuch things whereby the Amendment may not bring the Jury within the Compaſs of an Attaint, *Trin.* 24. *Car. B. r.*

A Record may be Amended in a ſmall matter after Iſſue joyned, ſo that thereby the Plea be not altred, *Trin.* 24. *Car. B. r.*

A Record may not be altred by the conſent of the Atturneys on both ſides, without a Rule of the Court, and if it be, if the party grieved thereby will inform the Court of it, the Court will order to make the Record as it was before the Amendment, and will puniſh the Atturneys, 3 *July* 1650. *B. S.*

If the Plaintiff Amend his Declaration, though it be by Rule of the Court, yet the Defendant may plead *de novo*.

The Imparlance Roll cannot be Amended by the Plea Roll, but the Plea Roll may be Amended by the Imparlance Roll, *Mich.* 22. *Car. B. r.*

The Court Amends *falſa Latine & forme*, in Bills preſented unto them by the grand Enqueſts by their conſents, but they may not alter matters of ſubſtance in them, *Mich.* 22. *Car. B. r.*

The Plaintiff may Amend his Declaration after the Defendant hath pleaded to it, paying coſts if it be not entred; but if he do Amend it, the Defendant may alſo after his Plea if he will, *Mich.* 22. *Car. B. r.*

And Iſſue entred upon Record, may upon leave by the

the Court be Amended in a small matter, but not in a material thing, or in that which will deface the Record, *Hill.* 22 *Car. B. r.*

An Original Writ cannot be Amended, because the party may take out another Writ, *Hil.* 22. *Car. B. r.*

A thing that is Amendable by Statute, may be Amended in an upper Court, before it be Amended in the inferior Court, if the matter be apparent and needs no examination, *Hill.* 22. *Car. B. r.*

An Error in the *Posea* may be Amended, but not in the Plea Roll, *Hil.* 23. *Car. B. r.*

A Plea cannot be Amended after the Plea is Demurred unto, nor after Issue joyned, *Mich.* 24 *Car. B. r.* yet if the Demurrer be but in Paper, though it be two or three Terms after the Plea was Demurred unto, the Demurrer may be Amended, if the party Demurring will pay costs, though the other party have joyned in Demurrer, 21. *Nov.* 1650. *B. S.*

A Return of a *Habeas Corpus* may be Amended in matter of form onely, the same Term the Return was made, but not afterwards, *Trin* 1651. *B S.*

It was not the Ancient course of practice to bring the Original Record out of the Common Pleas into this Court to Amend the Transcript thereof by, until this Court had agreed it should be Amended. This was observed to avoid needless charge which might otherwise fall out to the Client, *Pasc.* 1652. *B. Sup.*

If the Common Pleas do Amend a Record there, which is not Amendable by Law, this Court is not bound to receive the Record so Amended, but will refuse it, *Trin.* 1652. *B. Super.*

After a Plea pleaded, and the Jury returned, the De-

Defendant may not alter his Plea without moving of the Court. But before the Jury is returned if the Declaration, and the Plea be only in Paper, the party may Amend his Declaration, paying costs, or giving an Imparlance, by *Herne secundario. Mich.* 1655. *B. Super.*

Attatchment.

An Attatchment may be granted against one that stands Indicted of common Barratry, and will not plead to the Indictment, *Trin.* 23. *Car. B. Reg.*

This Court will not grant an Attatchment against one for disobeying an Order made by Justices of Assize, *Mich.* 23. *Car. B. r.*

An Attatchment may be granted against the party that doth refuse to joyn in a special Verdict agreed upon, and for refusing to joyn in the paiment of the costs expended upon the tryal, *Mich.* 23. *Car. B. r.* or for refusing to bring it into Court, *Hil.* 1649. 26. *Jan. Saturday*, *Pasc.* 23. *Car. B. r.*

An Attatchment is not to be granted against an Atturney for refusing to obey an order made by a Judge of this Court in his Chamber, for this is no contempt to the Court, because such an Order is not to be accounted for a Rule of Court, *Mich.* 23. *Car. B. r.*

An Attatchment may be granted against Justices of the Peace, for proceeding upon an Indictment after a *Certiorari* out of this Court is delivered unto them, to remove the Indictment hither, *Hil.* 23. *Car B. r.*

An Attatchment was granted against one of the parties, to a Suite in this Court, for perswading the Jurors, returned to try the Issue in question, not to ap-

appear at the day upon pretence that he had obtained an Injuction out of the *Chancery* to stay the proceedings in the Suite, 25. *Oct.* 1650. *B. Super.*

If an Attorney undertake to appear for one, and afterwards refuseth to do it, the Court will grant an Attatchment against him for his foul practice, *Pasc.* 24. *Car. B. r.*

The Court will not grant an Attatchment against one for disobeying a Rule of the Court, except it be proved that personal notice was given to him of the Rule, *Trin.* 24. *Car. B. r.*

If one Arrest another upon a Latitat, and then convey him into a Corporation, and Arrests him again there, and proceeds not against him upon the Latitat, but in the Corporation, an Attatchment lies against him for abusing the process of this Court and making it a stale to another intent, 27. *Nov.* 1650. *B. Sup.*

This Court will make no Rule for an Officer thereof to be paid his Fees, before he have dispatched his Clyents business, but if the Clyent will not pay him his Fees after he hath done his business, the Court will grant an Attatchment against him, by *Rolle Chief Justice.*

An Attatchment lies against the parties that will not pay such costs as are taxed by the Master of the Office of this Court, 21. *Car. B. r.*

An Attatchment was granted against one for proceeding in an inferior Court, notwithstanding that a *Habeas Corpus* Issued out of this Court, and thereupon a *Supersedeas* also granted to stay the proceedings there, and an Amercement set upon the party that was to return the *Habeas Corpus* for not making return of it, 21. *Car. B. r.*

In

In some cases the Court doth not use to grant an Attatchment against persons for misdemeanors done against the Court, but will send a Tipstaff of the Court to bring in the offendor, *viz.* if the party do live in or neer the Town. 21. *Car. B. r.*

An Attatchment was granted against a Sheriff, for refusing to bring moneys into Court which he had leavied upon an Execution, and was ordered by the Court to bring it in. *Mich.* 22. *Car. B. r.*

Generally an Attatchment doth lie for any contempt done against the Court. *Hill.* 22. *Car. B. r.*

An Attatchment was granted against one for taking out of an Execution without warrant. *Hill.* 22. *Car. B. r.*

An Attatchment doth lie by the Rules of this Court for not making a Return of a *Habeas Corpus* upon a *Pluries Habeas Corpus* issued forth. *Hill.* 22. *Car. B. r.*

An Attatchment was granted against one for Arresting one three several times upon Latitats taken out of this Court, for one and the same cause, and not proceeding against the party Arrested upon any of them. *Hil.* 22. *Car. B. r.*

An Attacthment was granted against two Bailiffs for Arresting the Tenants of one *Glover*, upon a Latitat out of this Court upon the Lords day, when they might have done it as easily upon any other day of the week. 23. *Car. B. r.*

An Attatchment was granted against a Baliff for executing of a Process of this Court against the Rule of the Court. *Pasc.* 23. *Car. B. r.* having notice of the Rule.

nA

Amerciament.

The Clerk of the Peace is Amerceable by the Court of the Kings Bench, for groſs faults in Indictments drawn up by him and removed thither, and it hath often been ſo done. 21. *Car. B. r.*

If upon a Latitat taken out of this Court, the Sheriff do return a *Cepi Corpus*, and the party Arreſted upon this Proceſs, doth not appear at the day of the Return, the Sheriff may be Amerced by the Court, yet if the Sheriff be Amerced, if the party Arreſted do appear within a week after the day he ought to have appeared, the Amercement may by the courſe of the Court be taken off of the Sheriff. *Hil.* 22. *Car. B. r.*

The Sheriff is to be Amerced for the faults of his ſpecial Bailiffs, for the Sheriff is the Officer to the Court, and not they. *Hil.* 22. *Car. B. r.*

If the Sheriff be Amerced by the Court for the not doing a thing belonging to his Office, and yet he continues to neglect to do it contrary to the Rule of this Court, the Court may encreaſe the Amercements upon him, until he perform his duty therein. *Trin.* 23. *Car. B. r.*

Amercements ſet upon the Sheriff, upon the motion of the party, if they be not eſtreated into the Exchequer, may be with a reſpectuatur that is be reſpited, if the party grieved who cauſed him to be Amerced will conſent thereunto, otherwiſe it cannot be. *Trin.* 23. *Car. B. r.*

A Sheriff out of his Office cannot be Amerced by the Court, for then he is not an Officer to the Court, But a *Diſtringas Nuper Vice-comiti* may iſſue out againſt him. *Mich.* 23. *Car. B. r.*

An

An Amercement which is grounded upon a Preſentment, which Preſentment is onely voideable, by reaſon of ſome fault in it, is a good Amercement, but if it be grounded upon a Preſentment which is abſolutely void the Amercement is alſo void. *Mich.* 24. *Car. B. r.*

Aſſignement.

The Aſſigning of the general Error upon a Writ of Error, brought to reverſe a judgement, is to ſay that the Declaration is inſufficient, that judgement is given for the Plaintiff, whereas it ſhould have been given for the Defendant, *&c.* and it is not ſhewed for what reaſon it is ſo. 21. *Car. B. r.*

If one bring an Action of Debt upon an Obligation that was given for performance of Covenants upon ſuppoſition of breach of the Covenants, he muſt Aſſign but one breach in that Action. *Trin.* 22. *Car. B. r.* otherwiſe the Defendant cannot juſtifie or take Iſſue.

A Statute Merchant or Staple cannot be Aſſigned over to another. *Mich.* 22. *Car. B. r.*

If Leſſee for yeers Aſſign all his Term to come in his Leaſe over unto another, he cannot reſerve a Rent, for if he do, ſuch reſervation is not good, becauſe the Leſſee hath no intereſt in the thing, by reaſon of which the Rent reſerved ſhould be paid. *Paſc.* 24. *Car. B. r.* 21. *Ap.* 1648. In the Caſe of one *Leach* and *Davy*.

Averment.

Where a Statute is recited, there one may not Aver that there is no ſuch Record, for generally an Averment as this is, doth not lie againſt a Record. For

a Record is a thing of a solemne and high nature, but an Averment is but the Allegation of the party. 21. *Car. B. r.*

One may not Aver a thing contrary to the Condition of an Obligation, no more then he may against a Record, for the Condition is part of the Deed which shall be supposed to he made upon good deliberation, and before Witnesses, and not be contradicted by a bare Averment. 7. *No.* 1650. *B. S.*

It was said by the Court, that if one assume upon himself to do a future act, and an Issue is joyned upon this promise; whether he hath done this thing or no, the party needeth not to Aver, that he hath done it for the doing or not doing of it, is Traversable, and the Plaintiffe might have taken advantage upon the Defendants Plea if it was not true.

Avowry.

If one make an Avowry for two causes, and can maintain his Avowry, but for one of them, yet it is a good Avowry. 21. *Car. B. r.*

One Avowry may be made upon two several titles of land though the Avowry is but for one Rent. 6. *Feb.* 1650.

Adjournment.

The Court is Adjourned by the Cryer of the Court after he hath made *Oyes* three times, and the substance of the Adjournment is to give licence to all parties that have any thing to do in the Court to forbear their attendance, and to take their ease till such a time precisely named, and then to attend in Court again.

Every last day of the Term and every Eve of a day which

which is not *dies juridicus*, or a Law day, whereof there is two such dayes in *Mich.* Term, *viz.* all Saints and all Souls day, and one a peece in *Hillary* Term, *Easter* Term and *Trinity* Term, *viz.* the day of the purification of our Lady in *Hillary* Term, Ascension day in *Easter* Term, and Saint *John* the Baptists day in *Trinity* Term, the Court is Adjourned, and before the Statute for the proceedings of the Law in *English*, it used to be done first in *English* and then in *French* two several times sitting the Court towards the latter end of the day, a good space of time being between the first and second pronouncing of the Adjournment but since the Statute the Court is onely Adjourned in *English*.

A Jury which doth not appear full, cannot be Adjourned for such a Jury is not accompted a Jury. *Hill. 22. Car. B. r.*

The first Adjournment of the Court is about eleven of the clock, and the last immediately before the rising of the Court.

Administration.

The mother ought to have the Administration of the Goods and Chattels of her child before a son or a brother or a sister. *22. Car. B. r. Trin.*

Where the payment of money would not be for the advantage of the Testator, there the not paying of it cannot be pleaded to be to the retarding of the Administration of his Goods and Chattels. *Mich. 22. Car. B. r.*

All Actions which an Administrator can have is given unto him by several Statutes. *Mich. 22. Car. B. r.*

Where an Administration is granted by such a

jurisdiction as the Law takes notice of, it is not necessary to shew that the Letters of Administration were granted by the Ordinary of such a place, but where the Law takes no notice of the jurisdiction of that Court where the Administration was granted, the Letters of Administration must be so pleaded, viz. *per loci illius Ordinarium*. *Mich* 22. *Car. B. r.*

Letters of Administration may be revoked by a Revocation without a seal, *Mich.* 22. *Car. B. r.*

The Ordinary ought not to repeal Letters of Administration which he hath duly granted, but if they be unduly granted, *viz.* to such a person, who by Law ought not to have them, he may revoke them. *Pasc.* 23. *Car. B. r.*

One of the half blood is in as equal a degree of kindred to the Intestate to have Letters of Administration granted unto him as one of the whole blood is. *Mich.* 23. *Car. B. r.*

An *Indebitatus Assumpsit* doth not lye generally against an Administrator. *Hill.* 23. *Car. B. r.*

Letters of Administration granted *per Carolum Regem debite* more adjudged to be well granted in that form. *Hill.* 24. *Car. B. r.*

Where the parties that require Letters of Administration from the Ordinary, are of equal degree of kindred to the Intestate, there it is in the discretion of the Ordinary to grant them to which of them he pleaseth. *Pasc. & Mich.* 24. *Car. B. r.*

Where one bequeaths a Legacy to one of his kindred, and the residue of his goods to another, Administration ought to be granted to him to whom the residue of the goods are bequeathed. *Mich.* 24. *Car. B. r.*

Arrest.

Arrest.

If an Action of Debt be entered, in any of the Counters in *London*, a Serjant may Arrest the party without the Sheriffs Warrant. *Trin.* 22. *Car. B. R.*

A Clerk of the Court ought not to be Arrested for any thing which is not criminal, because he is supposed to be alwayes present in Court, and must answer the Plaintiff there; and therefore he that doth Arrest him is punishable by the Court. *Trin.* 23. *Car. B. R.*

One ought not to be Arrested upon every slight suspicion of Felony, but there ought to be a good ground shewed for the suspition before he is to be Arrested, for Fame, Life and Liberties are precious things in the eye of the Law. *Mich.* 1649. *B. Sup.*

One that is not priviledged from Arrest, by reason of his attendance upon his business in some Court of Justice, or some other wayes priviledged by some special Rule or Order of Court, may be Arrested in *Westminster-Hall*, sitting the Courts there. *Mich.* 1649. *B. Sup. And it hath been often done.*

Appearance.

If one do give an Atturney Warrant to appear for him, and shall afterwards repeal this Warrant on purpose to delay his Appearance, the Court will notwithstanding the repealing of his Warrant, compel his Atturney to appear for him in such a manner as by the Rules of the Court he ought to have appeared if his Warrant had not been repealed. *Trin.* 22. *Car. B. R.*

In all Cases where Process may Issue forth to take

the persons body, there every such person may appear in Court in his proper person. *Hil.* 22. *Car. B.r.*

Though one do appear in Court upon the Return of a Writ Illued forth against him; yet he doth not admit the Writ to be good by such his Appearance, for he cannot have Oyer of the Writ, untill the party hath declared against him. *Hil.* 22. *Car. B.r.* For he is Arrested upon a Warrant made by the Sheriff, upon receit of the Writ, and doth not see the Writ.

The Principal cannot give a Warrant of Attorney to an Atturney to appear for his Suerty. *Pasc.* 23. *Car. B.r.*

If an Atturney do promise to appear for his Client, and yet afterwards refuseth to appear according to his promise, the Court will compel him to appear for him, although he say he had no Warrant to appear. *Hil.* 22. *Car. B.r.* And if he will not appear upon the Rule of the Court, an Attachment lies against him for his contempt to the Court. *Pasc.* 23. *Car. B.r.* & *Mich.* 24. *Car. B.r.*

If there be divers Defendants put in one Declaration, an Atturney is not bound by the Rules of the Court to appear for more of them, then such as from whom he hath Warrant to appear. *Pasc.* 24. *Car. B.r.*

If the Defendants Atturney do receive a Declaration against his Client from the Plaintiffs Atturney, this is an Appearance for him. 11. *Nov.* 1650. *Rot.* 24. *Mar. Pasch.* 1650. *Rot.*

In the Court of Common Pleas, upon a *Capias* illued forth in an *action firme*, the Defendant is by the Rules of that Court to appear and plead in the same Term, but it is not so in the Kings Bench, for there he hath liberty to imparle to the next

next Term. *Trin.* 24. *Car. B. r.*

An Infant ought to appear by his Guardian, and not by an Atturney, for he cannot make an Atturney, but the Court may Assign him a Guardian with his consent. *Pasc.* 24. *Car. B. r. Trin.* 1650.

If one appear in this Court, but doth not put in Bail, this is accounted to be no Appearance, for it is the putting in of Bail that Attacheth the Cause in Court; yet in the Common Pleas, it is held a good Appearance before Bail be put in. 7. *Maii.* 1650. *B. Sup.*

If an Atturney promise to appear for his Clyent, the Court will compell him to put in Bail for him.

If one appear by a name which is not in truth his right name, and thereupon the Plaintiff declares against him by that name, he shall be Estopped afterwards to say that he is not right named. 29. *Oct.* 1650 *B S.*

If the Atturney do appear for his Clyent but *de bene esse*, that is, if his Clyent shall like and approve of it; he may send back the Declaration delivered him upon this Appearance, and is not bound to plead unto it. 14. *Nov.* 1650. *B. S.*

Two Nichils returned upon a *Scire Facias* do amount to an Appearance upon which the party may proceed. 19. *Ap.* 1650. *B. Sup.*

Affidavit.

An Affidavit made before a Master of the *Chancery* is of no force, nor ought to be read in this Court; nor will the Court make any Rule upon such an Affidavit. *Trin.* 22. *Car. B. r.* & *Pasc.* 24. *Car. B. r.*

An

An Affidavit ought onely to set forth the matter which the party intends to prove by his Affidavit, and not to declare the merits of his Cause. 22. *Car. B. r.*

An Affidavit touching the tryal of the cause, ought to be made before one of the Judges of that Court in which the Cause is depending, and also in Term time, yet by special Rule of the Court it may be made in the vacation. *Mich.* 22. *Car. B. r.*

An Affidavit made against a Verdict is not to be admitted. *Pasc.* 23. *Car. B. S.*

Memorandum, *Rolle Chief Justice* commanded the Secondary to enter a Rule in the Office, that the party who doth intend to move upon an Affidavit do give the adverse party a Copy of the Affidavit, upon which he intends to move, that he may be prepared to answer the matter contained in the Affidavit when the motion is made, and need not to have longer time to answer it. *Mich.* 1650. *B. S.*

When an Affidavit hath been read in Court, it ought to be filed, that the other party may see it, and take a copy of it, if he please. By *Rolle Chief Justice. Pasc.* 1655.

Addition.

One may have one Addition at one day, and in one place, and yet may have another different Addition at another day, and in another place. *Mich.* 22. *Car. B. r.*

The Title of Knight or Baronet, is part of the parties name, and it is material, to be rightly used in pleading; but the titles of Gentleman or Yeoman, are additions *ad placitum* to be used or not used. *Mich.* 24. *Car. B. r.*

but

But the Title of an Earle of *Ireland*, is not an Addition *ad placitum*. *Mich.* 1649. *B. S.*

Award.

An Award that is made, that one of the parties, who submitted themselves to the Award, shall pay money in the house of a stranger, is not good, for this is to Award him, to do a thing which will make him a Trespasser, and so liable to an Action, which is unreasonable. *Mich.* 22. *Car. B. r.* But if the Award be to pay the money in the house of one of the parties that submitted to the Award, such an Award is good, for it implies a licence from the party, for him to pay it there. 10 *Feb.* 1650.

An Award to pay money at the house of a stranger, may be a good Award: for he may come to the house (in many cases) and be no Trespasser: but if he cannot come to the strangers house, without being a Trespasser to him, there such an Award is not good, as I conceive. *Mich.* 22. *Car. B. r.*

A conditional Award is not good, because it is not final to determine the matters in difference, submitted to the Arbitration, as Awards ought to be. *Mich.* 22. *Car. B. r.*

If all the matters submitted to the Arbitrators, be not Awarded upon, the Award is not good. *Pasc.* 23. *Car. B. r.*

An uncertain and doubtful award is not good, because it makes not an end of all the matters submitted unto by both parties, but leaves them at large, to sue and trouble each other, as they were before the award made. *Trin.* 23. *Car. B. r.*

An Award may be void in some part, and yet good in another part, *viz.* if the award do make an end of all

all the differences submitted unto the Arbitrators, by the parties. *Trin.* 23. *Car. B. r. Mich.* 24. *Car. B. r.*

An Award ought to be final, and certain, else it is not good. *Mich.* 23. *Car. B. r.*

If each party submitting to the Award, hath power by the Award to compell the other party, either by Law or equity to perform the Award; the Award is good although the party be thereby put to his Action. *Mich.* 24. *Car. B. r.*

An Award that a thing shall be done to a stranger, is a good Award, if it appear that the parties who submitted to the Award, have benefit by the doing of it. *Pasc.* 1650 *B. S.* 4. *Junii.*

If an Award be good in any part of it, to all the parties that did submit to it, if the Award be broken in that part, an Action will lie for that breach. *Pasc.* 1650 *B. S.* 4. *Maii.*

An Arbitrator cannot delegate, or transfer the power given him by the parties that submitted to the Arbitration, for it is contrary to the submission, but an Arbitrator may refer a Ministeral act, touching the Arbitration to another. *Trin.* 1650. *B. S.* 15. *Junii.*

The Court will not suppose any thing to be Awarded in an Award, which is not submitted unto, except the Contrary be made to appear. 10. *Feb.* 1650. *B. S.*

Affirmance.

It is not proper to move to have a Judgement affirmed, after a Writ of Error bought to Reverse it, before the Errors be Assigned, but one may move for Execution upon the Judgement. 22. *Car. B. r.*

Agree-

Agreement.

A forced Agreement of the party, is accounted to be no Argeement, and therefore the Court will not compell him that did thus agree to a thing, to perform his agreement. 22. *Car. B. r.*

An agreement which is made between the parties, onely by Paroll, may be discharged and made void at any time before it is broken by Parol without satisfaction; but after it is broken, it cannot be discharged without satisfaction of it. 22. *Car. B. r.*

If an Agreement made by Parol to do any thing, be afterwards reduced into writing, the Parol agreement is thereby discharged; and if an Action be to be brought for the non performance of this agreement, it must be brought upon the agreement reduced into writting, and not upon the Parol agreement. *Pasc.* 23. *Car. B. r.*

The Plaintiff and Defendant, may (by agreement between them) give mony to the Jury before they pass upon the tryal to defray their charges where the tryal is put off, and thereby they are forced to stay longer in Town then they expected. *Mich.* 1649. *B. S.*

Agreement.

By *Rolle Chief Justice:* If the Plaintiffs Atturney, and the Defendants Atturney, do agree to things in order to the proceedings in their Clyents cause, though the Clyents do afterwards refuse to consent to their agreement, yet the Court will compell the Atturneys to perform the agreement.

Atturn-

Attornment.

An Attornment made unto *Cestuy que use*, is a good Attornment in Law to the Fesee of the Land, if the Tenant of the land have notice of the use, when he did Attorn Tenant to *Cestuy que use. Mich.* 22. *Car. B. r.*

An Attornment made after Sun-set, is not a good Attornment for an Attornment is a solmne act, and ought to be done so that notice may be taken of it, which shall not be presumed to be in the night. *Mich.* 23. *Car. B. r.*

Assumpsit or Promise.

A promise that is made upon a sufficient consideration, is, as if it were made, upon a precedent condition. *Mich.* 22. *Car. B. r.*

An Assumpsit or promise to do a thing upon consideration, that he to whom he made the promise, shall surrender an indenture to him, is a good consideration to ground an Action upon for breach of this promise, although he to whom the Indenture is surrendred do take no estate by this surrender. *Mich.* 23. *Car. B. r.*

If one upon a good consideration do assume or promise to do a thing, he that promised to do it, shall have a reasonable time allowed to him for the doing of it, and shall not have liberty to do it at any time during his life. *Hill.* 22. *Car. B. r.*

Where an Assumpsit or promise is the very ground of the Action brought, there it must be pleaded precisely; but where it is but the inducement to the bringing of the Action, there it is not necessary,

ry, to set forth the promise precisely in the pleading. *Pasc.* 23. *Car. B r.*

Every contract made betwixt parties, doth in Law imply a promise that they will perform the contract. *Hil.* 1649. *B. S.* 4. *Feb.*

He for whose benefit a promise is made, may have an Action for the breach of this promise, although the promise was not made to him. *Pasc.* 23. *Car. B. r.*

The consideration to stay his proceedings in a Suit in Law, is a good consideration to ground an Assumpsit. *Trin.* 23. *Car. B. r. viz.* for ever or for a certain time. *But if he promise to stay* Paululum tempus *it is not good.*

If one part of the consideration, upon which a promise is made to do a thing be against the Law, and so void; yet if another part of the consideration be good and lawful, the consideration is good to ground an Assumpsit upon, for the consideration may be divided, and if any part of it be good, it is sufficient to make the promise good. *Mich.* 23. *Car. B. r.*

An Assumpsit grounded upon a consideration which was past before the promise made, is a good Assumpsit, if it be alledged to be made at the instance, or request of the Defendant. *Pasc.* 24. *Car. B. r.*

After a promise is broken, the party that made this promise cannot be discharged of this promise by Parol, but where the promise is executory he may. *Pasc.* 24. *Car. B. r.*

Where one becomes legally indebted to another, the Law creates a promise, that he will pay this debt; and if he do not pay it, there is a sufficient ground for the party to whom he is indebted, to bring his Action of *Indebitatus Assumpsit*, against

gainſt him to recover this Debt. *Trin.* 24. *Car. B. r.*

If the day of an Aſſumpſit made be pleaded in figures and not in words at length, it is erroneous. *Paſc.* 24. *Car. B. r.*

If an Action be brought upon an Aſſumpſit, and upon proof it doth appear that the agreement was more, or that it was leſs in ſubſtance then the Plaintiff hath declared upon, he hath failed in laying of his Action; otherwiſe it is if ſome circumſtance only be omitted *Mich.* 24. *Car. B. r.*

In an Action brought upon a promiſe, it is uſual to ground the Action upon one promiſe, in the ſubſtance of it, but to lay the promiſe divers wayes and by different words in the Declaration, to the intent that upon the tryal, the Plaintiff may reſt, or rely upon that way of laying it, that his witneſſes are beſt able to prove. *Mich.* 24. *Car. B. r.*

If one be indebted to another, and do promiſe to pay this debt at a day to come, the party to whom he made this promiſe, cannot bring his Action for the Debt untill the day be paſſed upon which he promiſed to pay it. By *Rolle Chief Juſtice*, and by *Germain* Juſtice; for he ſaid that the promiſe is a ſuſpention of the Debt. *pro tempore*, 29. *Jan.* 1650. *B. S.*

If one promiſe unto a woman, that in conſideration that ſhe will marry with him, he will intermarry with her; this is a mutual promiſe, and an Action lies by either party againſt the other for breach of it. 18. *Ap.* 1650. *B. S.*

Appeal.

Appeal.

In a Writ of Appeal, all the pleadings ought to be in *French*, *Mich.* 22. *Car. B. r.* This is since altred by the late Statute, that Enacts all proceedings in Law to be in *English*.

If in an Appeal, the Defendant plead in abatement of the Writ, and the Writ be adjudged good, it is peremptory, and he shall not be permitted to answer over, but shall be condemned upon the Writ. *Mich.* 22. *Car. B. r.*

In an Appeal, the Appellant ought to appear in Court in person; yet upon a motion to the Court, the Court may admit him to prosecute his Suite by his Atturney. *Mich.* 22. *Car. B. r.*

The defect in any Process in an Appeal, doth discontinue all the Appeal, and makes an end of the Action, as well as a defect in the Original Writ. *Hil.* 22. *Car. B. r.*

Age.

If the question be, whether the party be of full Age, or within Age, it shall be tryed by the Court, by inspection of the party, and not by a Jury. *Hil.* 22. *Car. B. r.*

Advantage.

It is not good practice to take an advantage against the Defendant, to obtain a tryal the sooner against him, for it causeth clamor from the party, and makes him (oftentimes) press the Court for a new tryal, *Hil.* 22. *Car. B. r.*

He that will in pleading, take advantage of a particular Statute, must shew particularly, that he is

compriſed within the Statute. *Paſc.* 23. *Car. B. r.*

Aſſize.

An Aſſize is to be Arraigned in *French*, and firſt the Defendants Councel doth pray the Court, that the Tenant may be called, which the Court grants, and thereupon he is called by the Cryer of the Court, and if upon his calling he do appear, then the Tenants Councel do demand Oyer of the Writ of Aſſize, and the Return of it, which is granted, and thereupon he prayes leave of the Court that he may Imparle, which is granted to a ſhort day after, and the Jury is adjourned by the Court to appear at that day. *Hil.* 22. *Car. B. r.*

Note that the Jurors that are to trye the Aſſize, are called Recognitors of the Aſſize.

At the day granted to the Tenant to Imparle unto, the Tenant is called, and upon his appearance he pleads to the Aſſize in Latin, and upon this an Iſſue is joyned between the parties, and after the Jury or Recognitors of the Aſſize are examined upon oath, upon a *voire dire*, whether they had the view of the land in queſtion, and if they ſay they have had, then are they ſworn to try the Iſſue, and the Councel do proceed to give them their evidence. *Paſc.* 23. *Car. B. r.*

Arraignment.

If in an Appeal brought, the Writ be abated, the Defendant cannot be Arraigned upon the count which is grounded upon this Writ. *Paſc.* 23. *Car. B. r.*

One *Awbry* that had been (formerly) Indicted for Felony,

upon the Statute for having two Wives, and was Out-lawed upon this Indictment, was brought to the Bar and Arraigned to this effect. First the secondary on the criminal side, spake thus, Awbry *hold up thy hand*, which the prisoner did; then he proceeded thus, Awbry *thou hast been heretofore Indicted of Felony, and thereupon Out-lawed in due course of Law, for having of two Wives, and hast been Arraigned thereupon, what canst thou say for thy self, why thou shouldest not have sentence of death, pronounced against thee.* Prisoner, *I take this exception to the Indictment, that it is not said to be found* per sacramentum duodecim proborum & legalium hominum; *and I desire I may have* Twisden *and* Hales *assigned for my Councel.* Court. *You shall have them.* Thereupon the Councel prayed that the prisoner might bring a Writ of Error to Reverse the Out-lawry. Court. *Let him have it.*

Attaint.

An Attaint doth lie against a Jury, that do give their Verdict, contrary to the evidence that is given unto them, *Pasc.* 23. *Car. B. r.*

Audita Querela.

Where the Bail is detained in prison, in Execution after the judgement, which was given against the Principal is Reversed by a Writ of Error; there the Bail may bring an *Audita Querela*, to be discharged. *Pasc.* 23. *Car. B. r.*

If one be taken in Execution, and is afterwards set at liberty, and then is taken again and detained in prison upon the same Execution, he may bring

his *Audita Querela* to be enlarged. *Mich.* 24. *Car. B.*

If a judgement given in another Court, be removed into the Upper Bench Court by a Writ of Error, and the party who had the judgement (notwithstanding the removal of it by the Writ of Error) do bring an Action of debt upon this Judgement in the Court where he obtained the Judgement, as he may do, if afterwards pending this Action of Debt, the Judgement be Reversed by the Writ of Error, the Defendant against whom the Judgement was obtained, may bring his *Audita Querela*, to be relieved against the Action of Debt, brought upon the Judgement. 3. *Feb.* 1650. *B. S.*

One *Tritton* that was in Execution, brought his *Audita Querela*, and prayed he might be Bailed, and it was granted, and he was bailed by four persons. 7. *Feb.* 165c. *B. S.*

Authority.

Doctor *Cowels* book, called the Interpreter, is not a book of Authority, to be urged for Law, for it was condemned to be erroneous and scandalous by Parliament, and by the authority thereof, was publikly burned as erroneous and scandalous.

A verbal authority given by divers Plaintiffs, in an Action of Trespas, and Ejectment, to deliver a Lease of Ejectment, upon the Land, though the Lease be signed and sealed by them off of the Land Let in the Lease, is a good authority to execute this Lease. So held in a tryal at the Bar, between *Vanlore* and *Crook*. *Mich.* 1649. 7. *No. B S.*

Apurte-

Apurtenant and Apendant.

Yards, Orchards and Guardens are Appurtenances to a Messuage, but Lands cannot be said to be Appurtenant to a Messuage though they be used with the Messuage, for the Messuage is a Messuage, though the Lands be taken away. *Hill.* 23. *Car. B.r.*

One Messuage cannot be Appurtenant to another Messuage, for they are (both) entire things of themselves. *Pasc.* 24. *Car. B.r.*

Accounts.

An Action of Account, or an Action of Debt lies at the election of the Plaintiff, against one for receiving mony of a third person for the use of the Plaintiff, although he had no authority given him to receive it. *Hil.* 23. *Car. B.r.*

The Statute of limitations of Actions, doth not bar the Plaintiff from bringing an Action of account, although he do not bring the Action within the time limited by the Statute, for before that Statute, one that had once cause of Action, might bring it at any time afterward without restriction of time, and this Action, is not mentioned in the Statute. *Trin.* 1650. 20. *Junii. B. S.*

An Action of Account doth not lie for Rent (alone) due and arrear, for the Rent demandable is certain, but if Rent be behind, and there are (also) other things mixed with it, for which the Action is brought then an Action of Account may be brought for both of them together, because it is incertain upon the

whole matter what is due to the Plaintiff. *Trin.* 1651 *B. S.*

If one receive money due to me upon an Obligation, or for Rent due to me, I may either have an Action of Account against him as my receiver, or an Action of Debt, as owing me so much money as he hath received: though in both cases he do receive the mony without my consent. *Trin.* 1651. *B. S.*

Auditor.

Many things are in charge with the Kings Auditors which are not in the Crown, *Pasc.* 24. *Car. B. r.*

Auditors Assigned by the Court, upon an Action of Account brought to receive the Account, are proper Judges of the cause. *Trin.* 24. *Car. B. r.*

Argument.

Two that are of Councel on one side, ought not to Argue for their Clyent both of them upon one and the same day, except it be for concluding of all the Arguments which are intended to be made for that party. *Mich.* 1649. *B. S. By the custome of the Court.*

It is not the usual course of the Court, for one Councellor to argue the same Case twice. By *Rolle Chief Justice.* 12. *Nov.* 1650. *B. S.*

Aide and Aide Prayer.

A Tenant for life may pray in Aide of all such persons as are in remainder of estate in the lands for which he is impleaded. 1649. 29 *Julii. B. S.*

Baron

Baron and Fem.

AN Action of Debt doth lie against the Husband for goods that were delivered to his Wife, if it may be intended that those goods did any wayes come to the use of the Husband. *Hil.* 21. *Car. B. r.*

A Fem Covert cannot submit to an Award, for the submission is a free Act of will, and the will of a Fem Covert is subject to the will of her Husband, and so is not free. *Mich.* 22. *Car. B. r. But another person may submit to an Award for a matter which concerns the Fem, and such a submission is a good submission in Law.*

A Feofment made to a Fem Covert is a good Feofment in Law to pass the Lands, if the Husband do know of it untill the Husband do disagree to it, for if he disagree from it, the Feofment is not good, but if he once agree to it, he cannot afterwards disagree from it, and if he once disagree, he cannot afterwards agree to it. *Q. Hil.* 23. *Car. B. r.*

A Fem Covert may take a thing, though it be not by Deed. *Hil.* 23. *Car. B. r.* viz. *If her Husband consent to it.*

If a Fem sole be indebted to *I. S.* and afterward the Fem doth marry, this Debt is become by the marriage, the Debt of the Husband and of the Wife, *viz.* the proper Debt of the Wife, and the Debt of the Husband in right of his Wife, and the Wife must be sued for this Debt jointly with her Husband; and if the Husband dye, pending the Suite, yet is not the Debt gone, but she may be sued for it after the

death of her Husband. *Pasc.* 24. *Car.* & *Trin.* 24. *Car. B. r.*

Bar in Actions.

A Recovery in a personal Action, is a Bar in all other personal Actions touching the same matter. *Hill.* 21. *Car. B. r. That is to say, it is a good Plea in Bar to a personal Action brought against the Defendant, to say that the Plaintiff did formerly bring an Action against him for the same matter, and did recover against him, and therefore he prayes the Judgement of the Court, whether he shall be permitted to proceed in his second Action.*

In an Action brought to recover a thing from another, if a recovery be there upon had by the Plaintiff, the Defendant may plead this recovery in Bar of a second Action brought against him for the same thing. 21. *Car. B. r.*

A Plea in Bar which doth not give a full answer, to all the matter which is contained in the Plaintiffs Declaration, is not a good Plea. 21. *Car. B. r.* viz. *If it answer not all the material matter of it.*

If the Plaintiff do reply to the Defendants Plea in Bar, this replication is a confession in Law, that the Plea in Bar is a good Plea, although the Plea be not good. *Trin.* 23. *Car. B. r. For the Plaintiff hath slipped his advantage of Demurring to the Defendants insufficient Plea by replying unto it.*

If an Action of Debt be brought against one, and he Imparles to the next Term, yet after his Imparlance, he may plead that the Plaintiff is Out-lawed in Bar of the Action. *Trin.* 24. *Car. B. r.*

B ó'e.

Baile.

One that is in Execution, is not Bailable by the Law. *Hil. 21. Car. B. r. For Bail is put in to secure the Plaintiff, that the Defendant shall perform the Judgement of the Court, and now the Law hath determined the matter, and there remains onely for the Defendant to perform the Judgement, and for the not performing it he lies in Execution.*

Before a *Capias* is taken out against the Bail, the Principal may render his body to the Marshal of the Court, and the entry of this in the Marshals Book is a sufficient ground to discharge the Bail, and it is not necessary to enter this upon the Record; but if the Principal do render his body after a *Capias* taken out against his Bail, it is in the power of the Court, whether it shall be accepted or not; and they may (if they will) give the Plaintiff leave to proceed against the Bail, notwithstanding the Principals rendring of his body. *21. Car. B. r. Because he did so not in due time, but hath put the Plaintiff to the charge, and trouble of suing out the* Capias.

One that had been Indicted thirteen yeers before for suspicion of murder in poisoning his servant, was brought in Court by a *Habeas Corpus*, and was bailed to answer the fact. *21. Car. B. r.*

Though one that is in Execution, do bring a Writ of Error to reverse the Judgement given against him, yet the Court will not Baile him, except there appear unto them very apparent Error in the Record. *21. Car. B. r. For else they will suppose that the Writ of Error is onely brought to gain the parties liberty, and so to frustrate the Execution.*

One

One *Arnold James* that was Bailed in the 44. and 45. yeer of Q. *Eliz.* upon a Judgement given against him in the Lord Majors Court of *London*, was brought into Court by a *Habeas Corpus. Trin.* 22. *Car. B.r.*

The Court did take Bail for a prisoner, against whom an Appeal of murther was brought, because that he did not flee for the murder supposed, and had been formerly Indicted for this murder, and acquitted upon the Indictment. *Mich.* 22. *Car. B.r. Upon which presumptions they conceived he was not guilty, else would not have Bailed him.*

Bail peices are small pieces of Parchment, in which is written the substance of the Bail, and are filed in the Office of the Court, besides the Bail that is filed upon Record. *Mich.* 22 *Car. B.r. And are made at the Judges Chamber (usually) before whom the Bail is taken.*

If the Plaintiff require special Bail, he ought to shew his cause of Action, before the Judge that takes the Bail; or else, to declare against the Defendant, that it may appear to the Court, that there is cause, why special Bail should be given, otherwayes common Bail is to be filed; and if he will not declare against the Defendant till after three Terms, then by the course of the Court he must take common Bail what ever the cause of Action be. *Hil.* 22. *Car. B.r. Trin.* 24. *Car.* 1650. 22. *Junii.*

Where one is sued as an Executor, he is not compellable to put in special Bail; but in case of a *Devastavit* for wasting the goods of the Testator, or where the Action is brought for something done by him since he became Executor. *Hil.* 22. *Car. B.r.*

If an Action be brought against Husband and Wife,

Wife, and the Husband is onely Arrested; yet the Husband must put in Bail for his Wife, if the name of the Wife be in the Writ, else he is not bound to put in Bail for her. *Hil. 22. Car. B. r. For it is the Writ that warrants the Bail.*

One may deposite a sum of mony in Court in lieu of Bail, if the Court please, and they may thereupon order the Plaintiff to waive other Bail. 22 *Car. B. r.* & *Trin. 23. Car. B. r.*

If the Defendant do render his body in custody in discharge of his Bail; the Plaintiff ought by the Rules of the Court to make his choice whether he will proceed afterwards against the Principal or the Bail. *Hill. 22. Car. B. r.*

After the Roll is marked to have special Bail, common Bail ought not to be entred; but if the Roll be not marked for special Bail, common Bail may be entred. *Hil. Car. B. r.*

One that stands Indicted for Felony, or for Forgery, ought not to be Bailed, untill he have pleaded to the Indictment. *Pasc. & Trin. 23. Car. B. r. For the parties shall be conceived to be guilty of the Crimes untill they plead.*

If one be committed to prison by the House of Commons in Parliament, the Court will Bail the party, if in respect of his Fact he is Bailable in Law. *Pasc. 23. Car. B. r.*

The Court will not Bail one that appears in Court upon the Return of his *Habeas Corpus*, before they have considered of the Return, to enform themselves whether he is Bailable by the Law or not. *Pasc. 23. Car. B. r.*

One committed by a Justice of Peace upon the Statute for having of two Wives, and appearing in Court

Court upon the Return of his *Habeas Corpus* was Bailed upon the prayer of his Councel. *Trin. 23. Car. B. r.*

Where the not filing of common Bail, will make Error in the Record, there the Court will compell the Plaintiff to accept of it. *Trin. 23. Car. B. r.*

One that is within Age, is not to be admitted to be Bail for another. *Trin. 23. Car. B. r. For he is not a person (of himself) responsable at the Law.*

One committed for Felony and brought into this Court by his *Habeas Corpus*, may not be Bailed with less then four Sureties. *Hill. 23. Car. B. r. For the Crime being Capital, requires extraordinary Bail.*

One Judge alone will not take Bail of a prisoner that appears upon his *Habeas Corpus*, *Pasc. 24. Car. B. r.*

The putting in of a Declaration, and the acceptance of it by the Defendants Attorney, with the privity of the Plaintiffes Atturney, is counted an acceptance of the Bail. *Hill. 23. Car. B. r. & 1650. Pasc. 14. Mail.*

If a priviledged person in this Court, do bring an Action against another in this Court; he ought by the course of the Court to have special Bail put in to his Action. *Hil. 23. Car. B. r. Whether there be cause for special Bail or not. This I suppose is* ex gratia.

Though one be Assigned by the Court to be of Councel on Record for a prisoner that stands Indicted of Felony, yet he ought not to move to have the prisoner Bailed. *Pasc. 24. Car. B. r. For he must not move for things against Law.*

One

One that is Out-lawed, ought not to be Bailed untill either the Out-lawry be Reverſed, or elſe he hath brought a Writ of Error to Reverſe it. *Paſc. Car. B. r. For an Out-lawed perſon is to receive no favour in the Law.*

One ſingle Judge in Court will not Bail a priſoner in a difficult caſe, but will adviſe with his Companions. *Paſc. 24. Car. B. r.*

One that is in Excution, in cuſtody of the Marſhall of this Court is not compellable to find Bail if another Action be brought againſt him, but if he be in the priſon of the Fleet in Execution, and an Action be brought againſt him in this Court, he muſt either be removed and committed unto the cuſtody of the Marſhal of this Court, or elſe he muſt put in Bail to the Action. *Trin 24. Car. B. r.*

Before a *Superſedeas* be iſſued forth upon a Writ of Error brought, he that brings the Writ of Error, ought to put in ſpecial Bail to pay what ſhall be due, if the judgement be affirmed. *Trin. 24. Car. B. r.*

It is not ſufficient for the Plaintiffs Atturney onely to mark the Roll for ſpecial Bail, but he ought alſo to give the Defendants Atturney notice, that ſpecial Bail is required to the Action. *Mich. 24. Car. B. r. For the Roll may be marked without notice, and ſo he know nothing of it, and plain practice is alwayes the beſt.*

If the Judgement be Reverſed by a Writ of Error which was given againſt the principal, there may be a ſpecial Writ taken out to diſcharge the Bail. *Mich. 24. Car. B. r.*

Bail is to be accounted good Bail, which is taken *de bene eſſe*, and before it be filed until it be queſtioned, and diſallowed. *Mich. 24. Car. B. r.* Upon examina-

amination of it before the Judge. *Hill.* 1649. 11. *Feb.*

Bail is so called because the party Bailed is delivered by the Law into the custody of those that are his Bail, and who are to answer the party if they do not produce the principal to do it. *Trin.* 1650. *B. S.* 15. *Junii.* *It is derived of the* French *word* Bailler, *to deliver a thing to another.*

If the Plaintiff do not declare against the Defendant in three Terms after Bail is put in, the Bail is not chargeable. *Trin.* 1650. 2. *Julii.* *For then the Defendant is to go only upon common Bail*

If the Plaintiffs Atturney do onely tell the Defendants Atturney, that his Clyent is to put in special Bail it is sufficient; and there common Bail is not to be admitted, although the Roll be not marked for special Bail. 3. *Feb.* 1650 *B. S.* *For the notice that there ought to be special Bail, is the thing required, and the marking of the Roll, is but to give notice.*

If one that lies in Execution do bring his *Audita Querela*, he is Bailable. 7. *Feb.* 1650 *B. S.* *So held in* Trittons *Case.*

By a Rule of the Court, the Plaintiffs Atturney must receive the Bail given before the Judge, from the Judge himself the same Term it was put in, upon pain of five shillings. 21. *Feb.* 1650 *B. S.*

When one becomes Bail for another in an Action of Debt, he doth (in Law) assume or take upon him to render the body of the Principal, if he be condemned, or else to pay the Debt he is condemned in. *Pasc.* 1652. *per Rolle. B. S.*

Untill a *Capias* be Returned against the Principal, the Bail shall not forfeit his Recognizance for the Prin-

cipals not appearance, by the Ancient course of the Court; but at this day by the indulgence of the Court he shall not forfeit his Recognizance, if the Principal come in at any time before the Return of the second *Scire Facias* against the Bail. *Trin.* 1652. *B. S.*

If one be sued in this Court for twenty pounds or above, the Plaintiff may by the course of the Court require special Bail, but if he sued for a less some common Bail must be accepted. *Per* Barrell *Clerk there.*

Special Bail is not (generally) to be given in an Action of Battery, yet in some such cases, the Court will compell the Defendant to put in special Bail, *viz.* where they perceive it was a foul Battery, and much dammage done by it; else an Action of Battery, is thought a slight Action, and not worthy of special Bail.

If there be no Writ in the Roll, nor any notice given for special Bail, and common Bail is filed, the Plaintiff cannot by the course of the Court, require special Baile. By *Rolle Chief Justice.*

Bail is not to be accounted Bail (properly) until it be filed, for then and not before it is upon Record. By *Rolle Chief Justice.*

If the Defendant put in Bail before a Judge, and it is allowed, and yet he will not file it, the Plaintiff may if he will at his own charge file it. By *Rolle Chief Justice. Pasc.* 1655. *To avoid Error.*

If Bail be taken by the Judge, *de bene esse*, the Plaintiff ought by the Rules of the Court, either to allow the Bail, or to shew cause to the contrary. By *Rolle.*

The sufficiency or non sufficiency of Bail ought to be

be first examed by the judge at his Chamber before the Court is to be troubled with the matter; but if the Judge cannot make the Plaintiff and Defendant agree in the giving and taking of the Bail, then the Court is to be moved in it; whereupon they will order both parties to attend and the Bail also, and will examine the cause of Action, and the Bails sufficiency, and settle the matters in difference according to reason. By *Rolle Chief Justice.*

The cause of marking the Roll for special Bail in this Court, is, because the cause of Action doth not appear upon the Latitat, by which the party was Arrested, but it is to be made appear by the Declaration. By *Glyn Chief Justice. But in the Common Pleas where they proceed upon an Original, the cause of Action doth appear.*

Burglary.

Burglary may be committed by one, though he do not break a house open, for if he be within the house, and steal away the goods in the house, and open the door on the inside, and go out and carry away the goods, this is Burglary. 22. *Car. Trin. B. r.*

Bankrupt.

He that is a Bankrupt to one Creditor, is accounted (in Law) to be a Bankrupt to all. 22. *Car. B. r.*

He that is once adjudged to be a Bankrupt, is to be alwayes accounted to be a Bankrupt. 22. *Car. B. r.*

If one shall with an intent to support the credit of a Bankrupt, suffer him to have his goods in his custody, and

and to dispose of them, the property of these goods shall be accounted to be in the Bankrupt, and the true owner of the goods shall lose the property in them. 18. *Ap.* 1501. *B. Sup. As a punishment for his false dealing herein, and of the mischiefs which may grow by such devises to evade the Laws.*

Bench.

Where one brings an Action for a Covenant broken, he ought to Assign the breach of it in such manner that the Defendant may justifie or take an Issue. *Hill.* 22. *Car. B. r. Else the party can make no defence for himself.*

If one bring an Action of Covenant against another, for not repairing houses, *&c.* demised unto him, he ought to Assign particularly wherein the want of reparations do consist, and not to declare generally. *Hill.* 22. *Car. B. r. For reparations do consist of particulars.*

If an Action of Debt be brought upon an Obligation for breach of the condition thereof, the Plaintiff is not to Assign in what the breach is, untill the Defendant hath pleaded performance of the condition. *Hill* 22. *Car. B. r.*

Baliff.

A Bailiff may execute a Writ out of the Hundred where he is Bailiff. *Pasc.* 23. *Car. B. r. For he is Bailiff all the County over, if he be the Sheriffs Bailiff, and not a Bailiff of some Liberty within the County.*

A Bailiff is a servant or minister of the Law, and by consequence he is a servant to the party, at whose Suite he is to Arrest any one. *Pasc.* 24. *Car. B. r.*

A Sheriffs Bailiff is not an Officer of the Court,

but the Sheriff himself is the Officer that the Court takes notice of. *Pasc.* 24. *Car. B. r.*

Bargain and Sale.

A Bargain and Sale made by one who is not in possession, though it be by Deed inrolled, is not good if there be no Livery made thereupon. *Mich.* 23. *Car. B. r.*

If one buy a thing of another, he that buyes it ought to pay the money he hath agreed to pay for it, before the seller of it is bound to deliver it. *Pasc.* 23. *Car. B. r.*

One may upon a good consideration, dissolve by Paroll onely an absolute Bargain. *Pas.* 24. *Car. B. r.*

One may sell his priviledge given him by the Law, as his birthright, as a freeborn subject, for a good consideration. *Trin.* 24. *Car. B. r.*

If one that is indebted do really and *bona fide* sell his Lands, though it be with an intent to avoid the paiment of his Debts; this sale is good, if the Vendee be not privy to his intent. *Mich.* 24. *Car. B. r.*

If one Bargain and Sell Lands, of which another is in possession, and claims title to them, this Bargain and Sale is not good. *Trin.* 1651. *B. S. Because it is a litigious title, the buying where the Law doth not allow.*

Battery.

To lay ones hands lightly or gently upon another, though he have no occasion so to do, is no Battery to ground an Action upon. *Trin.* 24. *Car. B. r. For the Law will not presume the party is damnified by it.*

Bill.

Bill.

There is difference betwixt an Inland Bill of Exchange, and an Outland Bill of Exchange which is made to return moneys beyond the Seas, for an Inland Bill is but in nature of a Letter, but an Outland Bill is of another nature and more regarded in the eye of the Law. 3. *July* 1650. *B. S. Because it is word for the advance of trade.*

Book.

When Books are delivered to the Judges, in causes which are to be argued; the Attornyes that deliver the Books, ought to write the number Roll of the Cases to be argued upon the Book, otherwise they will not receive them. *Mich.* 22. *Car. B. r. That they may know in what year and term, the causes were entred, that they may have recourse to the Records upon any occasion.*

The Books which are to delivered to be the Judges, of causes to be argued, are to be made at the equal charge of the Plaintiff and the Defendant. *Pasc.* 23. *Car. B. r. For the Law being doubtful in such Causes which are to be argued, whether it be on the Plaintiffs side or on the Defendants; the arguing of the Case doth equally concern them, and therefore it is reason they should be at an equal charge in bringing the cause to be argued and determined.*

When Books are to be delivered to the Judges, in causes which are to be argued; the Plaintiff ought to give Books to the Seignior Judges, and the Defendant ought to give Books to the puisne Judges. *Hill.* 1649. *B. S.*

Courts and their Jurisdiction.

THe Court of *York* hath not power to award a *Capias* in an Action upon the Case, by the Statute of 14. *H.* 7. *Hil.* 21. *Car. B.r.*

Inferior Courts ought not in pleading to shew a thing by implication, but they must set it forth expressly, and also *Surplusage* in an inferior Court will make error, for they must keep their forms precisely. *Hil.* 21. *B. r. For if they should be suffered to break their forms, it would introduce all barbarism and confusion.*

If a condition of an Obligation for the payment of money, do express no place where the mony is to be paid, if the Obligee bring an Action of Debt upon this Obligation for non-payment of the money according to the Condition of this Obligation, he must make it appear that the money was to be paid within the jurisdiction of the Court, where he brings his Action, or else the Action is not well laid. *Hil.* 21. *Car. B. r.*

The jurisdiction of an inferior Court must be set forth, and by what authority it is held whether by Prescription or Letters Patents. *Hil.* 21. *Car. B.r. For every inferior Court must be held one of these ways.*

The Court of Admiralty cannot hold Plea of a matter arising from a contract made upon the land, though the contract was made concerning things belonging to the Ship. *Hil.* 21. *Car. B.r.*

In the year of 4. *H.* 4. there was a petition preferred in the Parliament against the Court of Admiralty for

for holding of Pleas by the Spiritual Law, which they ought not to do, but by the Laws of *Oleron*, and so it was held by the House of Common in Parliament at that time. *Hill. 21. Car. B. r.*

If goods delivered a Ship-board be embezzled, all the Mariners ought to contribute to the satisfaction of the party that lost his goods, every one of them particularly according to their proportion by the the Maritime Law or customs, and the cause is to be tryed in the Court of the Admiralty, and in such cases no prohibition ought to be granted. *Hil. 21. Car. B. r.*

The Court of Admiralty ought not to try whether a fact were done in a place which is comprehended within a League, made with a Forraign Prince, or whether the place be without or not, nor ought to try whether the League were made at the time of the fact done or no. *21. Car. B. r.*

No Court can set a fine upon any person, for such an offence committed by him, for which they cannot grant him a pardon for his offence, when he hath paid the fine that is so set upon him. *21. Car. B. r. 4. H. 7. 5. 21. H. 7. 35.*

The Court ought *Ex officio* to take notice of matters contained in the Record of the matter depending before them, but they are not tyed to search the Almanack to compute the times of doing of things. *21. Car. B. r.*

An inferior Court ought to Return a Writ directed to them to stop their proceedings, although they be not bound to allow the Writ directed to them by giving obedience unto it, and in their Return of the Writ they are to shew, why they do not allow it, but do proceed notwithstanding the Writ direct-

ed unto them. 22. Car. B. r. That they may not seem to contemn the Authority above them.

If a Court which hath no jurisdiction of the cause depending in that Court do proceed to Judgment in it; the Judgement is good, if the Defendant did not plead to the jurisdiction of the Court; but admitted it to have jurisdiction of the cause by making his defence. 22. Car. B. r. Which was (once) in his power to allow or disallow, as he pleased; but not having disallowed it when he might, he shall be judged to have allowed the jurisdiction.

Although one plead in disallowance of the jurisdiction of a Court, yet he may (afterwards) come in and allow the jurisdiction and plead there. Mich. 22. Car. B. r.

The Court of the Kings Bench, is to regulate all the Courts of Law throughout England, that they do not exceed their jurisdictions nor alter their forms. 22. Car. B. r.

In some cases the jurisdiction of the Courts of the Cinque Ports extendeth upon the high Sea. Mich. 22. Car. B. r.

This Court may commit an Atturney, for doing of things against the express Rules of the Court, and notice of it. 22. Car. B. r.

This Court may issue out a Writ, to compell one that is elected to the Office of Constable, and refuseth to serve, to take his oath and to execute his Office. Mich. 22. Car. B. r.

The superior Courts at Westminster, and the inferior Courts elsewhere, do differ in their forms in proceeding in many things. Mich. 22. Car. B. r.

A Court that holds Plea by vertue of Letters Patents, ought to proceed according to the course of

the Common Law; but Courts that are Courts by Custome, are not bound to proceed according to the strict Rules of the Common Law; but may proceed according to their custome. *Mich. 22. Car. B. r. So that it be not contrary to Law.*

One may sue in the Kings Bench Court, by Originales as well as he may by Bill of *Middlesex* or Writ of Latitat; but the common and most usual way of proceeding is by Bill. *Mich. 22. Car. B. r.*

It hath been doubted whether the Marshals Court be a Court nor not, because it is not annexed to any Corporation, but unto *Whitehall*, which is but a house, and so it seems to be but a Court in Gross. *Mich. 22. Car. B. r. This was questioned when the Court was in being, but now that Court is taken away by Stat. and the question is out of doors.*

A County Court cannot enquire of dammages arising out of the jurisdiction of it. *Hil. 22. Car. B. r.*

One ought not to Sue to Bastardise an Issue, in the Ecclesiastical Court, but the tryall lies at the Common Law. *Pasc. 23. Car. B. r.*

Whether a Wife or not Wife is triable at the Common Law; but whether lawfully married or not lawfully married, is tryable in the Spiritual Court. *Pasc. 23. Car. B. r. For a marriage is pleaded to be according to the Lawes of the holy Church, viz. the Ecclesiastical Laws; and therefore most proper for them to determine whether the marriage were solemnised accordingly.*

Where the principal matter is tryable in the Spiritual Court, and there is (also) a thing incident to this tryal, which is tryable at the Common Law, yet a Prohibition shall not there be granted, *Pasc. 23.*

Car. B. r. Quia principale, trahit ad se accessorium suum.

A Recognizance in the Common Pleas is entred specially, but a Recognizance in the Kings Bench, is entred generally. *Pasc.* 23. *Car. B r.*

In the Universities they hold Pleas by custome, and do proceed according to the Rules of the Civil Law. *Pasc.* 23. *Car. B. r.*

In the Court of the City of *Exeter*, they proceed in that manner as they do in the Common Pleas, but they do not so generally in other inferior Courts. *Pasc.* 23. *Car. B. r. But in* Norwich *they proceed as they do at* Exeter, *agreeing with the Common Pleas.*

The Common Pleas doth not shew at large, whence the *venue* shall come, but inferior Courts ought to shew it at large, and not with an *&c.* as the Common Pleas doth. *Pasc.* 23. *Car. B. r.*

The Court of the publike Exchequer is a mixed Court, and doth consist of Law and Equity. *Pasc.* 23. *Car. B. r. The Pleas side is for matters of Law, and the Chequer Chamber for matters of Equity.*

The Court of the Kings Bench, is a Court of Eyre in that County whersoever it sits. *Trin.* 22. *Car. B. r. For it is not a fixt Court as the Common Pleas Court is, but removeable.*

The Court of the Common Councel of *London*, is not a Court of Record; but onely a Court of advice, and therefore neither a Writ of Error, nor an Attaint doth lie for matters done in that Court. *Trin* 23 *Car. B. r.*

One ought to speak against the jurisdiction of the Court, by pleading to it, and not by speaking in Arrest of Judgement. *Mich.* 23. *Car. B. r. For then it is too late.*

The

The Palace Court, is a Court in the Aire, and annexed to no Corporation, nor is beneficial to any ſociety of men; and from the Tunnel of *white hall*, and twelve miles from thence in compaſs is called the Palace Court. By *Rolle Chief Juſtice. Mich.* 24. *Car. B. r.* Now that Court is taken away.

The Statute of Ieofails doth extend to inferior Courts, if the Errors in their proceedings cannot be amended by the comparing of their Papers or ſuch other matters, for it is a beneficial Law, and to be (therefore) largely expounded. *Paſc.* 24. *Car. B. r.*

A Court cannot be held by Cuſtome, and by Letters Patents alſo, for if one haye a Court by Cuſtome, and he Purchaſe Letters Patents, and holds the Court by them, the Cuſtome is extinguiſhed. *Mich.* 24. *Car. B. r.*

This Court hath authority to reform abuſes in the behaviour and carriages of all perſons whatſoever, throughout all *England. Hill.* 1649. *Feb.* 9. *B. S.*

The Parliament cannot take way the juriſdiction of this Court, without words in the Negative, that is, that it ſhall not do thus or thus. 10 *Feb.* 1650. *B. S.*

This Court is not to be open more then two dayes after the Term for Demurrers and Pleas, and but three dayes for Iſſues. *Trin.* 1651. *B. S.*

All Courts of Record were originally the Kings. *Mich.* 1651. *B. S.*

Cove-

Corporation.

If a Corporation do become so poor, that it is not able to defray the publike charges, which are incident unto it as it is a Corporation; it is fit that the Corporation be seised unto the hands of the King. *Hill. 21. Car. For the Corporation becomes useless and dishonourable.*

If a Corporation doth neglect to elect such Officers as they ought to Elect by their Charter, or if they make a false Election not warranted by their Charter; this is a forfeiture of their Corporation. *Hill. 21. Car. B.*

The Corporation of the City of *London* is to answer for all particular misdemeanors which are committed within any of the Courts of Justice within the City; and for all other general misdemeanors committed within the City. *Trin. 22. Car. B. r. So I conceive it is of all other Corporations.*

A Body Politick is a creature of the King, created by Letters Patents. *Hill. 22. Car. B. r. For though a Corporation may be by prescription, yet it shall be intended, that such a Corporation did (originally) derive its Authority by grant from the King.*

Costs and Charges.

No Costs ought to be paid for the putting off of a tryal, where no fault was in the party against whom it is moved for Costs.

An Attatchment lies against the party that refuseth to pay Costs which are taxed by the Master of the Office. 21. *Car. B. r. According to the Rule of the Court.*

If

If a Jury be withdrawn (upon a tryal) by the consent of the Plaintiff and the Defendant, they shall pay the Costs of the Jury equally between them. *Trin. 22. Car. B. r. For if one of the parties (alone) should pay the Costs, upon bringing the Issue (again) to be tryed by the same Jury, as the course is so to do, it would be a sufficient matter for him that did not joyn in paying the Costs, to challenge the Jury for favor to him that did pay the Costs.* Trin. 22. Car. B. r.

If upon a tryal, the Plaintiff be forced to be *non suit*, because his witnesses did not appear, he may by Action recover his Costs expended against his witnesses that did not appear. *Mich. 22. Car. B. r.*

It is at the Election of the Defendant, if the Plaintiff do amend his Declaration, either to accept of Costs and to plead, or else to refuse Costs and to Imparle unto the next Term and not to plead. *Mich. 22. Car. B. r.*

The taxing of Costs is the Act of the Court, although they be taxed by the Secondary of the Office. *Mich. 22. Car. B. r. For the Secondary is but the Officer of the Court, and an instrument employed by the Court for such purposes, and therefore the Court may alter the Taxe if they see cause.*

Taxes ought not to be Taxed untill the Attorneys on both sides be heard for their Clyents before the Secondary. *Mich. 22. Car. B. r. Except it be where either of the Attorneys doth neglect to appear before the Secondary having notice thereof.*

If an Enditment, taken in any County, be removed by *Certiorary* into the Kings Bench; and the

Court

Court be moved, that it may be sent back again into the County where it was taken, and if the Court (upon good cause shewed) doe order it accordingly; it shall be removed back again, at his costs who desires it to be removed. *Mich. 22. Car. B. r. For it shall be intended, that the removing of it is for his benefit and ease.*

When upon a tryall the plaintiff becomes *non-suit*, the Defendant must pay the Jury their Costs. *Mich. 22. Car. B. r. For it is intended, he receiveth benefit by the non-suit.*

If there be any such fault in the entring of a speciall verdict, so that it must be amended, the Plaintiff or Defendant, who was the occasion of making the fault, must pay the Costs for the amending it. *Mich. 22. Car. B. r. if it be such a fault that Costs must be expended to amend it.*

If a tryall at the Barr be put off in favour of the Plaintiff or the Defendant, and the party that was not the cause of putting it off, be compelled by putting it off to keep his Witnesses in Town, he that caused the tryall to be put off, shall pay such Costs for keeping them in Town, as shall be taxed by the Secondary. *Hill. 22. Car. B. r.*

If one will give leave to another to sue in his Name, he that grants the leave shall pay the Costs of the suit. *Hill. 22. Car. B. r. For he is the person upon record, of whom the Law takes notice of, and the Court takes no notice of the agreement between the parties.*

Costs are not to be allowed for unreasonable motions, but only for such as the party was necessarily put unto by the course of the Court. *22. Car. B. r.*

Arbitrators are to make the Writings touching their arbitrement, at their own proper Costs; and ought

ought not to award, that the parties that submitted to the award shall pay for them. *Pasc.* 23. *Car. B.* r.

Where the Judges of the Court doe desire to have Books of the Cause depending before them, to be advised of the matter in Law the better, by considering of the pleadings; the Plaintiff and the Defendant ought to joyn in the Costs, for the copying of the Books to be delivered to them. *Trin.* 23. *Car. B.* r.

It is the course of the Court, to refer the taxing of the Costs to the Secondary of the Office, and not to make any speciall rules for such matters. *Mich.* 23. *Car. B.* r.

No Costs are to be allowed upon a Repleader. *Mich.* 23. *Car. B.* r. *For both the parties were in fault, to suffer such an insufficient issue to be joyned.*

It is not necessary that the Jury should give Costs, but they may leave it to the Court to doe it. *Mich.* 23. *B.* r.

Upon a Judgment upon a *Nihil dicis*, in the Common Pleas, that Court will give Costs and dammages generally. *Trin.* 24. *Car. B.* r.

If there be a speciall verdict found in a *Replevin*, the Costs and dammages shall be given, either against the replevyer, or against the avowant, as the issue shall be found, for, or against them. *Pasc.* 24. *Car. B.* r.

The Court will not order any thing concerning the encreasing or mitigation of Costs, but the parties are to attend the secondary in it, and to abide by his order. 13. *Nov.* 1650. *B. S.* Except it be in extraordinary Cases.

If a Juror appear upon a tryall which is to be at the barr, and the Jury is adjourned, and he doth not again,

again appear, at the day of adjournment he shall have no Charges allowed him for his former appearance. 2. *May* 1651. *B. S.*

Chancery.

A Master of the Chancery hath not power to take an Oath, but in a Cause which is depending in the Court of Chancery. 21. *Car. B. R.*

The Chancery is not a fixt Court, neither in respect of the place where it sits, nor of the time when they may sit; for they may sit out of the Terme, and what place they please. 12. *Nov.* 1650. *B. S. By* Rolls Chief Justice.

Capias.

A *Capias*, duely sued out, may be filed afterwards. 21. *Car. B. R.*

Challenge.

When the Jury appear at a Tryall, before the Secondary calls them particularly by Name, upon the panel, to be sworne: he bids the Plaintiff and Defendant, to attend their Challenges. 21. *Car. B. R.*

It is not a sufficient cause to Challenge a Juror, because he had delivered his opinion touching the title of the Land in question. *Pasch.* 23. *Car. B. R.*

If one take a principall Challenge against a Juror, he cannot (afterwards) Challenge that Juror for favour, and waive his former Challenge. *Pasch.* 23. *Car. B. R.*

If the Defendant doe not appear at the Tryall when he is called, he loseth his Challenge to the Jurors, although he doe afterwards appear. *Mich.* 23. *Car. B. R.*

If one Challenge a Juror, and doe not make his Challenge good, and after the Jury is adjourned; he shall not Challenge that Juror again at another day, except it be for some matter which is hapned since the adjournment. *Mich. 23. Car. B. r.*

If one Challenge a Juror, he cannot (afterwards) have him to be sworne, if the Secondary have entred the Challenge. *Pasc. 24. Car. B. r.* Q. *Whether he may have him sworn if the Challenge be not entred.*

It is a good Challenge against a Juror, to say that he was a Juror in a former tryall for the same Land in question, and upon the same title, though the tryall was between other parties. *Mich. 24. Car. B. r.*

When the Array (that is the whole Jury) is Challenged, the Councell of the party that makes the Challenge, must read his Challenge in *French:* and after he hath so read it, it is to be delivered to the Secondary, who is to read it in *Latine.* 6. *Nov.* 1650. *B. S. Which was then done in a Challenge for want of Hundreders. But now by the late Statute this is to be done in English.*

After the fore-man of the Jury is sworne, the Array cannot be Challenged. 6. *Nov.* 1650. *B. S. For then it is too late: for to Challenge the Array, is to Challenge the whole Jury.*

A Challenge to a Juror for favour, is not accounted to be a principal Challenge.

If some of the Jury be Challenged for favour, they shall be tried by the rest of the Jury their companions, upon their Oathes, whether they be indifferent, to try the matter in question, or not: without going from the barre, when they have heard all the evidence

dence that is given against them by the Councel of the party that takes the Challenge. 1655. *B. S.*

In a Case tryed at the Barr, between the Earl of *Leicester* and the Lady *Anne Holborne*, a Juror was Challenged, because he was returned by the Name of *Mathew*, whereas (in truth) his Name was *Mark*, although he was (also) called *Mathew*, as he affirmed, being examined upon a *voire dire*, to say what his Name was; and upon this Challenge the Juror was drawn, and the Jury could not be taken for want of him, but a *tales* was granted.

It is neither a principall Challenge, nor a Challenge for favour, to say that the Juror challenged, was a supernumerary Juror in a former Jury returned for the same parties, in a Cause betwixt them, and did receive money for his charges, of the party for whom the verdict passed. *By* Glynn *Chief Justice.*

Certiorary.

It is not necessary to have a Judges hand to a Writ of *Certiorari*, to certifie a Writ of Error. 21. *Car. B r.*

A *Certiorari* to remove an Endictment, doth lye by the course of the Court, without moving the Court to it. *Mich.* 22 *Car. B. r.*

After a Writ of Error is brought, there must be a Writ of *Certiorari* directed to the Court where the judgment was given, for the reversing whereof, the Writ of Error is brought, to certifie the record into this Court. *Mich.* 22. *Car. B. r.*

A *Certiorari* to remove an Endictment, is good, although it doe bear date before the taking of the Endictment which is to be removed by the *Certiorari*. *Mich.* 22. *Car. B. r. For the date is not materiall.*

Whe

When a certificate of a Record is made out of an inferior Court, they ought to make the Certificate as they will stand to it at their perill, and it cannot be afterwards amended. *Hill.22.Car.B.r. For a Writ of diminution is not grantable to an inferior Court.* 2.

This Court, will upon motion, grant a *Certiorari*, to remove a judgment given in an inferior Court, to the intent, that the Plaintiff may have a *Scire facias* against the Defendant, to shew cause, why he should not have execution upon his judgement. *Hill.22.Car. B.r. This was done in the Case of* Rooke *against* Knight, *to remove a judgement given in* Dymchurch, *a member of one of the Cinque Ports in* Kent: *upon the motion of* Lancelot Johnson *of the Inner Temple.*

The Justices of Assize, may certifie to this Court, if a Jury doe finde a verdict against the evidence given them. *Pasc.23.Car.B.r. That judgement may not be speedily entred upon such a verdict.*

It was doubted, whether a *Certiorari* do lye to the Cinque Ports. *Pasc.23.Car.B.r. Notwithstanding, it was done in the Case of* Rooke *and* Knight.

If one party pray a *Certiorari*, and have it granted, the other party cannot have another *Certiorari. Pasc. 23.Car.B.r.* Viz. *For the same thing.*

If there be cause to certifie the Court touching a custome used in the City of *London*, this Certificate is not to be made in writing, but the Recorder of *London* is to certifie the Custome to the Court, *ore tenus*, or by word of mouth. *Trin.23.Car.B.r.* But not if the Custome do concern the Lord Major particularly. *By* Rolle *Chief Justice.*

When Justices have authority given them by a Statute within a Liberty; a *Certiorari* lyes to them if the Liberty be not excepted. *Hill.23.Car.B.r.*

A *Certiorari* ought to be granted upon a matter in Law only, and not upon a matter of fact. *Pasc. 23. Car. B. r.*

Out of an inferiour Court, the original Record ought to be certified into this Court upon a *Certiorari*, directed to them upon a Writ of Error brought to reverse their judgement: but the Common Pleas do only certifie a transcript of the Record before them. *Trin. 24. Car. B. r.*

The Pronotaries of the Common Pleas will not make a certificate of any matter before them unto this Court, without a Rule of this Court to enjoyn them. *Trin. 24. Car. B. r.*

A *Certiorari* ought to be directed to the *Custos brevium*, and to be returned by him, and it not to be directed to his deputy, or returned by him. *Mich. 24. Car. B. r.*

A *Certiorari* doth not lye to remove a Cause after a verdict is given in it. *Mich 24. Car. B. r. For then the Cause is determined.*

If a *Certiorari* to certifie a Record, be (by some mishap) so torn or defaced, that the Record cannot be perfectly certified by it, the party may have an *alias Certiorari*. *Mich. 24. Car. B. r. Upon motion to the Court.*

A *Certiorari* may be granted to remove an Act of Common Counsel of the City of *London*, if the Act be made against the Law. *6. Maii. 1650. B. S.*

The Court may grant a new *Certiorari*, to remove a Record before them upon a Writ of Error brought, after that *in nullo est erratum* is pleaded: if it be *ad informandum conscientiam*, in affirmance of the judgement: but at the prayer of the party that brings the Writ of Error, and after *in nullo est erratum* pleaded,

pleaded, they will not do it. *Trin.* 1651. *B.r. For judgements are favoured in Law, and are to be supported as much as justice will permit.*

Rolle Chief Justice said, *That he did not use to grant a* Certiorari *to remove an Endictment, but where the party that prayes it, doth shew good cause why it should be granted, viz. that there cannot be an indifferent tryal had in the County where the Endictment was found. And where he doth grant it, he prays that it shall be tryed the next Terme following.* B. 1. 24. *Car.*

A *Certiorari* ought not to be granted to remove an Endictment, after the party endicted hath traversed and pleaded to the Endictment. *By* Rolle. *Mich.* 1654. *B.r.*

A *Certiorari* to remove an Endictment, ought not to be made by any of the Clerks in the Capital Office, without moving the Judges in it, and obtaining a Judges hand to it, and a Warrant from the Master of the Capital Office.

Customes.

The Customes of *London* are confirmed by *Magna Charta.* C. 9.

Customes which are unreasonable are not good, nor to be allowed. *Trin.* 22. *Car. B.r.*

Any Custome which may be intended to have had a lawfull beginning, is a good custome. 11. *H.* 7. 14. *Mich.* 24. *Car. B.r.*

Any thing which may be good and lawfull to be done, which had its original from the Consent and agreement made betwixt parties, may be good and warranntable to be done by vertue of a Custome. *Mich.* 25. *Car. B. r.*

By the Customs of *London*, an Action upon the Case doth lye against one for calling a woman Whore. *Hill. 22. Car. B. r.* But she must be an Inhabitant of London. But Q. whether it lye or not; for by the Common Law it lyes not; and Bacon *Justice* thought the Custome not good. And quere it lye for a Lodger.

The Customs of the Universities are confirmed by Act of Parliament. *Pasc. 23. Car. B. r.*

The Customs of *London*, if there be a question in this Court, whether there be such Customs or not, are to be certified by the mouth of the Recorder. *Pasc. 24. Car. B. r.*

By a Custome which they have in the Town of *South-hampton*, if a bastard child be found within the Town, and the father of it cannot be discovered, he that comes next into the Town, after the Childe was found, must keep the Child. *Mich. 24. Car. B. r.* It may be they of the Town did time out of minde agree amongst themselves that it should be so.

By a Custome of the City of *Bristol*, an Action brought against one upon a bare promise of the party, that he would pay the money, or upon a *concessit solvere*, is maintainable there: and so it is by the Custome of *London*. 31. *Jan.* 1649. *B. S.*

If two persons be found in arrear upon an Accompt grounded upon the Custome of Merchants, any one of them may be charged to pay the whole summe that both of them were found to be arrear, upon the accompt: and this is, by the Custome of Merchants. 26 *Jan.* 1650. *B. S.*

If there be a tryal to be had, Whether there be such a Custome as is pretended within the City of *London* or not, this issue cannot be tryed in the Upper Bench, but it must be tryed in *London* in the

the Hustings. 27. *Jan.* 1650. *B. S.*

By a Custome used at Sea, the goods in a ship which is taken as prize, ought not to be taken out of the ship, before the ship so taken be condemned for prize in the Court of the Admiralty. *By* Rolle *Chief Justice, in the Case betwixt* Lever *and* Smith. *Mich.* 1654. *B. S.*

Compulsion.

None shall be Compelled by Law, to shew or declare any thing, of which, by common intendment, he cannot have knowledge. 38. *H.* 6. *f.* 3. *Mich.* 22. *Car. B. r.*

Counsell and Counsellor.

A Counsellor ought not to set his hand to a frivolous Plea or Demurrer, to delay a tryal. *Mich.* 22. *Car. B. r. For it is not fair practise.*

After the Court hath delivered their opinions of the matter in Law depending before them; the Counsell at the barr ought not to urge any thing more for the Clyent in that Cause. *Mich.* 22. *Car. B. r. For it is uncivil, not to acquiesce in the judgement of the Court, but to seem unsatisfied therewith.*

One that is endicted for felony, may have Counsell assigned him to speak to matters in Law, which may arise upon the Endictment. *Pasc.* 23. *Car. B. r.*

One cannot have Counsell assigned by the Court upon an Endictment *in forma pauperis*. *Pasc.* 23. *Car. Mich.* 1649. *B. r. But Counsell must be assigned to him by warrant under the hand and seal of the Lord Chief Justice, that the Counsell may have it in his hand to shew to the Court if they require.*

Where Councel is Assigned to one that is Indicted for Felony, the Councel Assigned, ought to be entred upon Record. *Pasc. 24. Car. B. r.*

County.

Some part of the County of *Chester* is not within the County Palatine of *Chester*. *Mich.* 22. *Car. B. r.*

Where a River doth run betwixt two several Counties, there one half of the River belongs to one County, and the other half of it belongs the other County. *Pasc.* 23. *Car. B. r. viz. From the shoar to the middest of the River, as far as the River extends in length upon the County.*

Constable.

If one that is elected to the Office of a Constable, do refuse to take his Oath to serve in that Office, this Court may send forth a Writ unto him, to compell him to do it. *Mich.* 22. *Car. B. r.*

If a Court-Leet do not elect a Constable where they ought to elect one, or do not give him his Oath to execute his Office as they ought to do, the Quarter Sessions in the County where the Leet lies may do it. *Mich.* 22. *Car. B. r.*

A Constable that is a Constable in one Town, cannot execute the Office of a Constable in another Town. *Pasc.* 24. *Car. B. r.*

Commission and Commissioners.

The Commissioners of the Statute of Bankrupt have not authority by the Statute of 1. *Jac.* to transfer any other Action to any person in order to the recovery of any of the goods of the Bankrupt, but only

onely such Actions as the Bankrupt himself might have had to recover them if he had not been found a Bankrupt. *Mich. 22. Car. B. r.*

The King may by his Commission make one or more Deputy Escheators, to find an Office after the death of a noble man, or for some other special cause. *Pasc. 24. Car. B. r.*

A Justice of Assize may have a special Commission to ride the Circuit alone, but if his Commission be generall and according to the Statute, he is to have an Associat joyned with him in the Commission. *Trin. 24. Car. B. r.*

Sessions.

If a Court-Leet do not choose a Constable, or do not give him his Oath to execute his office, the quarter Sessions of the County where the Leet is, may do it. *Mich. 22. Car. B. r.*

If one speak of a thing to be done at the General Sessions of the Peace, it shall be intended to be meant that it was done at the Quarter Sessions. *Trin. 24. Car. B. r. For that is the most General Sessions, being held for the whole body of the County.*

Commitment.

None shall be committed for a contempt done to the Court, if the contempt do not clearly appear to the Court. *Mich. 22. Car. B. r.*

Every Commitment to the Goal, ought to be made by Warrant under the hand and seal of him that commits the party, and the cause why the party is committed ought to be expressed in the Warrant. *Pasc. 23. Car. B. r. This is true of Commitments*

made by Justices of the Peace in the Country; but this Court may commit by Parol.

Contempt.

One may be committed for a Contempt done to the Court, but the matter of the Contempt must be certain and not doubtfull. *Mich.* 22. *Car. B. r.*

An Attatchment lies against one for a Contempt done to the Court. *Hil.* 22. *Car. B. r.*

If the Court make a Rule in an Action of Trespas and Ejectment, that the Defendant in the Action shall confess the Lease, Entry, and Ouster; and yet at the Tryal the Defendant will not do it, the Plaintiff must proceed notwithstanding in his Tryal; but he may also proceed in this Court against the Defendant upon his Contempt in not obeying the Rule of the Court. *Pasc.* 24. *Car. B. r.*

If one take out Execution upon a Judgement after that a Writ of Error is brought in this Court to Reverse the Judgement, and after the Writ of Error is allowed in the Court where the Judgement was given; this is a Contempt to this Court. *Trin.* 24. *Car. B. r. But it is no contempt if the Roll be not marked, or notice given to the party of the Writ of Error brought.* Mich 1649. B. r.

The Plaintiffs Attorney is not bound to search the Record, whether a Writ of Error be brought or not, but may take out Execution upon the Judgement given for his Client, if there be no *Supersedeas* taken forth, or have not notice given him of the Writ of Error. *Trin.* 24. *Car. B. r.*

Condi-

Condition.

There is difference between a Condition which is annexed to an Estate subsequent, and a limitation subsequent, which is annexed to an Estate presently vested. *Hil.* 22. *Car. B. r.*

Causes.

The Clerk of the Court is to enter the causes which do depend in Court in his book in the Office and out of it he ought to write several papers, *viz.* one for every Judge in the Court of those causes concerning which any thing is to be spoken in Court the next day, and to send the Papers to the Judges severally at five a clock in the Evening, before the causes are to be spoken unto. *Hil.* 22 *Car. B. r. That the Judges may have time to advise of them.*

Confirmation.

A confirmation of Letters Patents, which are voide in respect that they are against the Law, is a voide Confirmation, although it be done by Act of Parliament; but if they were not against the Law but did onely want Law to Authorize them if they be afterwards Confirmed by Act of *Parliament*, the Confirmation is good. *Hil.* 22. *Car. B. r.*

Chattel.

One may by a conveyance raise a Chattel which may be determinable, as well as it may be done by a last Will and Testament. *Trin.* 23. *Car. B. r.*

Copy-

Copyhold and Copyholder.

A Copyholder doth forfeit his Copyhold by cutting down of the Timber growing upon the Lands belonging to the Copyhold Tenement. *Trin.* 21. *Car. B. r. Except it be for reparations of the Copyhold.*

Q. Whether the King shall have a Copyhold, which is granted to one in trust for an Alien. Hill. 23. Car. B. r. *It seems he shall.*

It is a forfeiture of the Copyhold, for the Copyholder to refuse to pay his fine, if it be a fine certain, or to refuse to appear at his Lords Court, and to do his service there. *Trin.* 24. *Car. B. r. But if he refuse to pay a fine uncertain after it is set, Q. Whether it be a forfeiture or not, for the fine may be unreasonable.*

A Surrender of a Copyhold to a use, makes not one a Copyholder, as to a purchase, but as to discent it is otherwise, 5. *Feb. Hill.* 1649. *B. S. Q.*

If a Copyholder for life cut down Trees, the Lord may carry them away. 6. *Nov.* 1650. *B. S.*

A Copyhold estate cannot be surrendred to another by an Attorney without Deed, but one may be admitted to a Copyhold estate by Attorney without a Deed. 2. *Ap.* 1650. *B. S. For there is difference betwixt the passing of an estate, and the receiving of an estate passed.*

Contract.

No usureous Contract can be grounded upon a direct bargain which may either be accepted or refused by the party. *Hil.* 21. *Car. B. r.*

If a Contract be usureous, and made so that the Statute may be avoided, yet it is a corrupt bargain, and shall be adjudged to be within the Statute. *Hil. 21. Car. B. r.*

An absolute Contract may be dissolved by Parol if there be a good consideration for the dissolving of it. *Pasc. 24. Car. B. r.*

Every Contract doth imply in it self an Assumpsit in Law for to perform the Contract. 4. *Feb. Hil. 1649. B. r.*

If I do promise to pay a Debt to *I. S.* which Debt is owing to *I. S.* by *G. D.* this is *nudum pactum* for want of a consideration; and if I do not pay it, yet an Action doth not lye against me for not paying it according to my promise. 3. *Feb.* 1650. *B. S.*

Covenant.

If one do Covenant generally to levy a fine of certain Lands, he that doth thus Covenant, is not thereby bound to go before Commissioners Authorized by a *dedimus* to take this fine to acknowledge his consent. *Trin. 24. Car. B. r.*

If a Lessee for years, Covenant expressly, to repair a house let unto him, and during his term, the house is burned down, he is tyed by the Law to repair or new build it, whether it be burned by negligence or other wayes. *Mich. 1649. B. S.*

Consideration.

One may sell his Freedom and Priviledge for a consideration. *Trin. 24. Car. B. r. But without a Consideration he cannot part with it so, but that he may recal his grant of it at his pleasure.*

If

If a Deed of Feoffment be made to two or three of Lands or Tenements, and no Consideration is expressed in the Deed, for the making of the Deed; it shall be intended by the Law, that it was made to them in trust for the feoffor. *Mich. 24. Car. B. r. For it shall not be intended, he would part with his Land without a Consideration.*

If there be a double Consideration for the grounding of a promise, for the breach whereof an Action is brought, though one of the Considerations be not good, yet if the other be good, and the promise broken, the Action will well lye upon that breach. *Trin. 51. B.S. For that one Consideration is enough to support the promise.*

Common and Commoner.

Hoggs are not Commonable Cattell. *Pasc. 1650. B.S. Yet by consent of the Commoners amongst themselves, it is usuall to put Hoggs upon Commons and Wasts.*

A Common which is of late times erected, must be erected by deed. *3. Nov. 1650. B.S.*

The Lord of the soile of the Common, may either surcharge or enclose an overplus of a Common, (that is,) so much of it as is more then needfull for the Commoners to common upon, in regard of the largeness of the Common, and the small number of the Commoners and of their stock. But if there be not such an overplus of Common, he cannot surcharge or enclose any part of the Common. *18. Apr. 1650. B.S. Nor can be erect a Warren of Conys upon the Common.*

Confession.

Confession.

If the Plaintiff, in an *Ejectione firmæ*, will not save the Tenant of the Land, against whom the Action is brought, harmless from all dammages that may befall him, by reason of the Action brought against him: the Court will suffer the Tenant to Confess the Action: but if he will save him harmless, the Court will not suffer him to do it. 12. *Nov.* 1650. *B. S. For as its reason that the Tenant should not be prejudiced by the suit which concerns him not; so neither is it reason on the other side, that he should prejudice the Plaintiff, by doing of that which he receives no just benefit by doing it.*

Copy.

If upon a tryal you will give part of a Copy of an Office in evidence to prove a Deed, which Deed is to prove the parties title to the Land in question that gives it in evidence: If that part of the Office given in evidence, be not so much of the Office as doth any way concern the Lands in question, the Court will not admit it to be given in Evidence. 28. *Apr.* 1651. *B. S.*

The Jury upon a tryal at the Barr, may not be admitted to have any Copies of Deeds or other writings, which were given in evidence unto them, away with them from the Barr to consider of their verdict; because they are not under seal. 28. *Apr.* 1651. *B. S. But all Deeds or Writings under seal and given in evidence they may have, but nothing which was not given in evidence may they have.*

Conveyance.

Conveyance.

A Conveyance made unto one by his reputed Name, although he is not the same person in Law as he is reputed, yet is the Conveyance good: but if such a Conveyance be made to raise a use, then it is not good. 28. *Apr.* 1651. *B.S.*

A Conveyance cannot be fraudulent in part of it, and good as to the rest. 30. *Apr.* 1650. *B.S. For if it be fraudulent and void in part, it is void in all, for it cannot be divided.*

If I Covenant to Convey Lands to another, I am bound to do it at my own charges: except it be otherwise agreed betwixt us. *Trin.* 1651. *B.S.*

Certificate.

This Court will not make a Rule, for a Judg to make a Certificate to them of a matter done before them; but if the Judg will do it voluntarily they will receive it.

Clarks.

By *Roll* Chief Justice, no Clarke ought to be admitted into the Office of the *Custos brevium*, without the consent of the Lord Chief Justice first obtained; and those that are admitted, ought to be chosen out of the best of the Clarks in the Upper bench Office. 1655.

Departure.

When the Plaintiff doth plead in his Replication, a matter which is contrary to that which is admitted in his Declaration, this is a Departure from his

his Plea. *Mich. 24. Car. B. Rot.*

Denison.

An Alien that is made a Denison by the Kings Letters Patents, is thereby enabled to purchase Lands, but he is not thereby enabled to inherit the Lands of his ancestors as Heir at Law, but as a Purchaser he may injoy Lands of his ancestors. *Mich. 42. Car. B. 5. But if he be Naturalized by Act of Parliament, he may inherit them as Heir at Law, as well as have them by purchase.*

Delivery.

It hath been the course to Deliver a Lease of Ejectment to the party to whom the Letter of Attorney is delivered, and for the Attorney, by vertue of his Letter of Attorney, to deliver possession of the Land let by Lease upon his delivery of the Lease. *Pasc. 24. Car. B. r.*

A Deed cannot be Delivered as an escrow to the party himself to whom the Deed is made. *Trin. 24. Car. B. r. But it must be delivered to a stranger as an escrow, for so soon as it is Delivered to the party to whom it is made, it takes effect as a Deed, and cannot be an escrow.*

Dower.

A woman was not Dowable of Tythes, before the Statute of 32. *H.* 8. 24. *Car. B. r.*

A woman is Dowable of a Common appendant, but not of a Common in gross. *Pasc. 24. Car. B. r. For Common appendant belongs to Lands and Tenements whereof she was endowable, and cannot be severed.*

A woman may be endowed of the profits of an Office

Office, or of a Faire, or of a Market. *Pasc. 24. Car. B. r.*

Dower is favoured in Law, and as it is favoured in it self, so is the party that sues to recover her Dower favoured in her proceedings in Law to recover it, as much as in justice may be permitted. *Pasc. 24. Car. B. r.*

Difference.

There is a Difference between the Latine words *in dilatè* and *immediatè*, and it is more proper to direct a Writ to be returned *in dilate*, then to direct it to be returned *immediate*. *Hill. 23. Car. B. r. For to return it* in dilate, *is to return it with as much speed as may be, and not to use any trifling excuses or delayes to retard the return of it: but to return it* immediate, *is impossible, for it will require some convenient time to do it in, and as it may fall out, longer then is expected.*

Depositions.

Depositions taken in a Cause depending in Chancery, though the Cause be there determined or dismissed, may be given in evidence at a tryal at the Barr, in a suit depending here between the same parties that sued in the Chancery: if the party that deposed to the Interrogatories be dead at the time of the tryal, else not: but those Witnesses must appear in person in Court, and be examined *viva voce* in the Cause, and so it is of Depositions taken in any other Court. *Mich. 24. Car. B. r.*

Discretion.

Where a thing is left to any person to be done according

according to his Descretion the Law doth intend it must be done with sound Descretion and according to Law; And this Court hath power to redress things that are otherwise done, notwithstanding they be left to the Descretion of those that do them. *Trin.* 23. *Car. B. r. For their Descretion is not properly Discretion, but folly or madness.*

Devise.

A Devise of the profits of Lands for years, is a Devise of the Lands themselves, for so many years as the profits are Devised. *Trin.* 23. *Car. B. r.*

If a man Devise his Lands to his children without saying more; this is but a Devise for life. 36. *Eliz. B. r. In* Dickons *and* Marshals *Case adjudged.* Hill. 23. *Car. B. r.*

A Devise to one of any thing which the Law would have cast upon him, although it had not been Devised untohim, is a void Devise. *Mich.* 24. *Car. B r. For his title to it by Law, is his ancient and best title, and the Law will adjudge him to take by that.*

An Administrator of a Term cannot Devise it; but an Executor of a Term may; for an Executor hath a greater interest in his own right, then an Administrator hath. 1651. *B. r.*

Deodands.

Deodands (that is) the Goods and Chattels of which *felo de se* (that is) of him that kills himself, do belong to the Kings chief Almoner (that is) he that disposeth of the Kings Alms, to distribute them to the poor, or to employ them in other pious uses, and a discharge given for them to any person that hath such Goods of

a feio de se in his poſſeſſion by the Almoner or his Depucy, is a good diſcharge in Law for them; but a diſcharge given for them by an under-Depuey, it no good diſcharge. *Trin.* 23. *Car. B. r.*

Demurrer.

If a Demurrer be entred, it cannot be waived, except both the Plaintiff and Defendant do conſent unto it. *Mich.* 22. *Car. B. r. Nor then without leave of the Court.*

A Demurrer may be upon a replication Rejoynder, *&c.* as well as upon a Plea. *Mich.* 23. *Car. B. r. For all parts of a pleading to iſſue ought to be according to the Rules of Law, and if any part fail, the whole is naught.*

If the Court do perceive that a Demurrer is put in onely to put off a tryal, or for delaying of the proceedings, they will not allow of ſuch a Demurrer, nor enjoyn the other party to joyn in the Demurrer, but will give Judgement againſt the party upon his frivolous demurrer. *Mich.* 22. *Car. B. r.* And 24. *Car. B. r.*

Where there ought to be alleged a place from whence the *venue* ſhould come, and it is not alleged, but omitted, and yet an iſſue is joyned between the parties; and the *venire* is from the body of the County, the Defendant may Demur upon the *venire facias* (if he will) but if he do not Demur, but ſuffer the tryal to paſs, this is a good tryal. *Mich.* 22. *Car. B. r. For he hath ſlipped his advantage of Demurrer.*

Where a Statute gives leave to plead generally, and the party waives this leave and pleads ſpecially, the other party may Demur upon his ſpecial Ples if he

ſee

see cause. *Pasc.* 23. *Car. B. r.* *For though he needed not to have Pleaded specially, yet having done it, the Plea must be good at his own peril.*

A generall Demurrer doth not lye to a *Scire facias*. *Pasc.* 23. *Car. B. r.* *For it is in the nature of a judicial writ.*

Upon a Demurrer to an evidence given to a Jury at a tryal, the Jury are to be discharged and not to pass upon the tryal: But the matter in Law (in question) upon the Demurrer, is referred to the Judges to determin. *Pasc.* 23. *Car. B. r.*

A Demurrer to an evidence is, when the party that doth demurre upon it, doth demand the judgment of the Court, whether the matter given in evidence be sufficient (admitting it to be all true) to finde a verdict for the Plaintiff, upon the issue that is joyned betwixt him and the Defendant. *Pasc.* 23. *Car. B. r.* *And when such a Demurrer is taken, the Plaintiff and the Defendant must agree the matter of fact in dispute betwixt them, otherwise the Court cannot proceed to determine the matter in Law: but there must be a* Venire de novo *to try it.* Trin. 23. Car. B. r.

The party that is delayed in his proceedings by reason of a Demurrer, may move the Court, to appoint a short day after to hear Counsel speak to the Demurrer, and the Court will grant it. *Trin.* 23. *Car. B. r.*

In a Demurrer upon an evidence, the party demurred unto, may demand judgment of the Court, whether he ought to joyn in the Demurrer or not. *Trin.* 23. *Car. B. r.* *For, if there be not a colourable matter for to ground the Demurrer upon, the Court will not force the party to joyn in it, but will overrule it.*

One cannot demurre upon a thing upon which an iſſue cannot be taken, by reaſon of the doubleneſs, and by conſequence, doubtfullneſs of the matter. *Trin. 23. Car. B.r.*

After the Plaintiff and Defendant have joyned in the iſſue which is to be tried betwixt them; neither of them can Demurre without the conſent of the other. *Trin. 23. Car. B.r. For, by their joyning in the iſſue, both parties have admitted the whole pleading to be good as to try the iſſue.*

There muſt be a ſpeciall Demurrer to a negative preignance, (that is) a negative Plea, which doth (alſo contain in it an affirmative, and to an argumentative Plea, (that is) a Plea, which concludes nothing directly, but only by way of argument or reaſoning,) and to a double Plea, for a generall Demurrer, doth admit them to be good. *Mich. 23. Car. B. r. For it doth not ſhew any fault in them as a ſpeciall Demurrer doth.*

One may demurre to a Demurrer for the doubleneſs of it; but if he that might demurre, doth not demurre to it, but joynes in the Demurrer, he cannot demurre afterwards, for he hath ſlipped his advantage, *Mich. 23. Car. B.r.*

A Demurrer is double, when that he that doth demurre, doth aſſign, in his Demurrer, (for cauſe of it,) one error in fact, and another error in Law, to be in the Plea upon which he demurres; which he ought not to do in one Demurrer. *Mich. 23. Car. B.r.*

One may demurre to one part of a Declaration, and yet plead to the other part of it with a *Quod ad*, &c. *Mich. 23. Car. B.r.*

Discharge.

If an Attachment be granted by the Court against one, and he is thereupon apprehended, he shall not be discharged upon an *affidavit* made on his behalf: but he that is attached, must appear in person in Court, and be there Discharged. *Mich* 22. *Car. B. r. For it is a personal offence for which he is attached, and he shall not therefore be discharged, except he yeild obedience in person.*

A paroll agreement, before it is broken, may be discharged by paroll or word; but after it is broken, it cannot be discharged without satisfaction made for the breach of it. *Hil.* 22. *Car. B. r. For by the breach of it, an injury is done to the party which requires satisfaction.* Hill. 20. Car. B. r.

If one be arrested by a *Latitat* out of this Court, and the Plaintiff do not declare against him in two Terms after; if the Defendant move the Court that he may be discharged, because the Plaintiff doth not prosecute his suit against him, the Court will Discharg him. *Pasc.* 23 *Car. B r. For liberty is precious, and much favoured in Law.*

If the Plaintiff, at whose suit the Defendant is in execution, do give the Defendant leave to go at large (that is) out of prison, the execution is thereby discharged: and if the Plaintiff do take the Defendant again upon the same execution, and commit him to prison, the Defendant may bring an *Audita querela* against the Plaintiff, for his illegall imprisoning of him. *Mich.* 23. *Car. B. r. For it shall be intended, that the Plaintiff had satisfaction upon the execution, or else he would not have given the Defendant leave to go at large.*

A Prisoner that is committed for Felony, and

brought to this Barr by a *Habeas Corpus*, cannot be discharged, although the return upon the *Habeas Corpus* be not sufficient to give the Court satisfaction that he was justly committed. *Pasc.* 24. *Car. B. r.*

A Prisoner that is brought to the Barr, to be bailed by a Writ of *Habeas Corpus*, if he were committed for matter on the Crown side, he must be brought into Court on the Crown side, (that is) on that side of the Court where the Master of the Crown-Office sits; but if he stands commited for a matter determinable on the Pleas side, he must be brought into Court, to be bailed on that side of the Court where the Master of the Kings-Bench Office sits, *viz.* on the left hand of the Lord Chief Justice. *Pasc.* 24. *Car. B. r.*

Of later time it hath been permitted by the Court to Discharge the bail, if he bring in the principall before the retorne of the second *Scire facias* issued out against the bail; but anciently it was not so. *Mich.* 24. *Car. B. r.*

A Judgment cannot be Discharged by pleading a Parol agreement between the parties to discharge it. 27. *Jan.* 1650. *B. S. For, matters of record are not to be wiped off with words.*

Disseisor.

If one enter wrongfully into my Lands, and after his entry I accept rent of him for the Land, I cannot afterwards take him for a Disseisor. *Trin.* 24. *Car. B. r. For, by my acceptance of the rent I have assented to his entry.*

Distresse and Distringas.

The selling of a stray is not a Distresse of it, for he that

that doth seise it claims a property in it 21. *Car. B. r.* *And no man can Distrain that which at his own, for to Distrain, is but to take one thing from another, and to put it into the custody of the Law, as a pledge for another thing which is due to him that doth Distrain, from him that is distrained.*

An amercement lies not against a Sheriff out of his Office, for a misdemeanour done by him, whilst he was in his Office; but a *Distringas, super Vicecomit.* lies against him for it. *Pasc. 24. Car. B. r.*

The Writ of *Venire facias*, for the Sheriff to summon a Jury, is retornable by him into the Court: and upon the retorne made of it by him, there issues out of the Court another Writ called a *Distringas Juratores*, to cause the Jury to appear in Court at the tryal of the Cause, if the tryal be at the Barr in this Court, or at the Assises in the County where the Action lies, if the tryal be to be there. *Mich. 24. Car. B. r.*

The Writ of *Distringas Juratores*, ought to be delivered unto the Sheriff so timely, that he may warn the Jury to appear four dayes before the Writ is retornable, if the Jurors live within fourty miles of the place of tryal, and eight dayes if they live further off. 13. *May.* 1651. *B. S.*

Discontinuance.

A Discontinuance in proces is helped, if there follow a verdict in the cause, and the party do also appear upon the verdict. 21. *Car. B. r.* Q. *whether every discontinuance of proces may be thus helped.*

Where a Vouchee may be essoigned, and the essoigne is not adjourned, this is a Discontinuance: but where it is not necessary the vouchee should be es-

ſoigned, there the want of adjournment of the eſſoigne, makes no Diſcontinuance. *Hill. 22. Car. B. r.*

An appeal may as well be Diſcontinued by the defect of the proceſs or proceeding in it, as it may be by inſufficiency of the original Writ. *Hil. 22. Car. B. r.*

The Plaintiff cannot Diſcontinue his Action after a generall verdict found againſt him, nor after a ſpecial verdict is found upon matter of Law, ariſing upon the evidence given at the tryal in the cauſe. *22. Car. B. r.*

The Plaintiff may Diſcontinue his Action by the leave of the Court, after he hath joyned in demurrer with the Defendant, ; paying Coſts to the Defendant, if the demurrer was only upon matter of form in the pleading: But if the demurrer was as well upon matter of ſubſtance as upon matter of form, there he cannot Diſcontinue his Action by leave of the Court, *Mich. 24. Car. B. r. Except the Defendant will conſent unto it.*

A diſcontinuance of an Action or Suit, is not a perfect Diſcontinuance, untill it be entred upon the Roll: but if this Diſcontinuance be to be pleaded, it is not neceſſary to plead the entry of it. *Trin. 23. Car. B. r.*

Where a Demurrer is a generall Demurrer, whereas it ought to have been a ſpeciall Demurrer; this is a Diſcontinuance, and there can be no judgment given in the caſe upon ſuch a Demurrer. *Hill. 23. Car. B. r.*

After a Demurrer upon an Arbitration pleaded, it is not uſual to Diſcontinue the Action. *Mich. 24. Car. B. r.*

Den and.

Demand

Where there is a Demand of a thing to be made, there the Demand must be a Legal Demand, (that is) it must be made in such manner as the Law requires; otherwise he that made the Demand, can take no advantage in Law upon this Demand. *Hill.* 21. *Car. B.r.*

If there be no place expressed in a Deed, where a rent for Land, or a *namine pœne*, or any other thing demandable shall be made, the Law doth then direct, that the Demand shall be made upon the Land, *&c.* out of which the rent, or *nomine pœnæ*, or other thing demandable do issue or go out of. *Hill.* 21. *Car. B.r.*

A Demand of a rent reserved upon a Lease made of a Messuage with Lands belonging to it, ought to be made at the Messuage; because the Messuage is the most eminent part and place of the thing let, and most notorious for the Lessee to take the best notice of the Demand. 21. *Car. B.r. For the Lessee shall be presumed to be more conversant there then in any other place. Yet if the Demand were made upon any part of the Land, and the Lessor can prove that the Lessee was there and took notice of it, I suppose it is a good Demand: but if he were not there when the Demand was made, Q. whether it be a good Demand.*

The parties bringing of an Action of Debt for monies due upon an Obligation, and the taking of a distress for rent by him unto whom the rent is due, is a good Demand in Law of the Debt due by the Obligation, and of the rent. *Trin.* 22. *Car. B.R.*

A Demand in a *præcipe* to recover Lands, ought to be more certain than a Demand in a Writ of Dowr.

18. Nov.

18. Nov. 1650. B.S. *For Dowr is one of the things favoured in Law.*

Declaration.

A Declaration may be against one that is in custody of the Marshall of this Court upon an information, although he do not appear to an Action. *Hil.* 21. *Car. B. R.*

The Plaintiff is not compellable to file his Declaration; yet if it be not filed, and afterwards judgment is given in the Cause, the judgment is erroneous for want of a Declaration. *Hil.* 21 *Car. B. R. For before it is filed it is not upon record, and so there is no Declaration to warrant the judgment.*

If the Plaintiffs Attorney do file a Declaration against the Defendant in the Kings Bench Office, the Defendant is bound to take notice of the Declaration at his peril. 21. *Car. B. r.*

A Declaration ought not to vary or differ from the Plaint, that is, the Cause which the Plaintiff doth express in his Writ why he brings his Writ. 21. *Car. B. r. For the Writ is the ground of the Declaration, and that which warrants it.*

If the Plaintiff declare against the Defendant upon a corrupt Contract made against the Statute of 21. *Jac.* made against Usury, he must express in the Declaration, that the Defendant *corrupte agreavit*, or else he must shew, that the Contract was made *pro usura*, contrary to the Statute 21. *Car. B. r. For he must pursue the words of the Statute.*

One may not Declare against one that is in the Kings Bench prison, that is not either in *custodia Mareschalli*, or that hath not filed his bail, or that is not a priviledged person in this Court. 21. *Car. B. r.*

If

If one be in custody of the Mareschall of this Court at the suit of J. S; or have put in bail in this Court to the Action of J. S; any other person may put in a Declaration against him, the same Terme he was committed, in custody, or did put in bail as aforesaid. 21. *Car. B. r.*

If the Plaintiffs Attorney deliver a Declaration to the Defendants Attorney, and after doth amend his Declaration, and tenders another Copy to the Defendants Attorney, viz. as he hath amended it; the Defendants Attorney is not bound to receive it, except the Master of the Office do order him to receive it, or that the matter be moved in Court, and thereupon the Court do order him to receive it *Mich.* 22. *Car. B. r.*

The Plaintiff in this Court is not bound by the Law to Declare against the Defendant, within three Termes next after his apparance in Court to the Plaintiffs Action, but if he do not declare against him in three Termes next after, the Plaintiff must then take common bail of him. *Mich.* 22 *Car. B. r.* and *Mich.* 1650. *B. S. For it shall be presumed, if there had been cause for special bail, the Plaintiff would not have been so dilatory in his proceedings, and besides the Defendants imprisonment is made longer by the Plaintiffs delay, and is considerable.*

A Declaration must be certain, and the Court is not to take things in it by implication; and also if it be not certain, the Defendant cannot make a direct answer unto it. *Mich.* 22. *Car. B. r.* and *Pasc.* 24. *Car. B. r. As he ought to do.*

The Plaintiff is to enter his Declaration in the Office, and all Copies which are made of it, and the record it self of the Cause, ought to be directed and warranted

warranted by it. 22. *Car. B. r.*

If an Action upon the Case be brought upon an Assumpsit, the Plaintiff must declare upon the whole promise made, and not upon part of it, else the Declaration is not good. *Mich.* 22. *Car. B. r.*

Where the Plaintiff doth declare upon a Will, or upon Letters of Administration, he ought to set forth the Probate of the Will, and the Letters of Administration granted unto him, in his Declaration, otherwise the Declaration is not good, but the Defendant may demurre upon it. *Mich.* 22. *Car. B. r. For without shewing them, they do not entitle themselves to the Action brought, nor make themselves persons enabled by Law to bring the Action.*

If a Declaration be defective in matter of form only, and the Defendant doth take no exception against it, but pleads to issue, and a verdict is thereupon found for the Plaintiff, the Defendant cannot afterwards take advantage of this defect in the Declaration, for the defect is helped by the verdict: but if the Declaration be insufficient in matter of substance, the verdict will not help it, but the Plaintiff may take advantage of the insufficiency of it after a verdict. *Mich.* 22. *Car. B. r.*

All matters which do lye in the cognisance of the Court, ought to be set forth certainly in a Declaration; but it is not necessary to set forth certainly matters of fact which are tryable by the Jury. *Hil.* 22. *Car. B. r.*

If the Plaintiffs Attorney cannot finde the Defendants Attorney, to deliver a Declaration unto him, he may deliver the Declaration into the Office, and that shall be accounted a good delivery of it; so that if the Defendant do not plead according to the Rules of

of the Court, judgment may be entred againſt him. *Paſc.23. Car.B.r. For it is intended, that Attorneys ought to attend in the Office, and there to inform themſelves in the proceedings of their Clyents Cauſes.* Q. whether if he can finde him, whether he muſt deliver the Declaration unto him; for the Court held he need not, but Hodſden the Secondary held the contrary.

A thing that is good and warrantable to be put in a Writ, is good and warrantable in a Declaration. *Trin. 23. B.r. For the Declaration is grounded upon, and warranted by the Writ.*

If there be words in a Declaration which have no ſignification, the words ſhall be adjudged to be void words, and ſhall not hurt the Declaration, but the Declaration ſhall be taken as if thoſe words were left out of the Declaration. *Hill.23. Car. B.r. Paſc.24. Car. B.r.*

A Declaration in Engliſh is not good, for all pleadings in Law, ought by the Statute to be in Latine. *Paſc. 24. Car. B.r. But this is now altred by a late Statute, which doth exact, that all proceedings in Law ſhall be in Engliſh.*

An *Audita querela*, and a *Scir facias*, are in the nature of a Declaration. *Paſc. 24. Car. B.r. For they do ſet forth at large the cauſe of the Plaintiffs Action.*

Declarations which are grounded upon originall Writs, as all Declarations in the Court of Common Pleas are: if they be faulty, they cannot be amended, but Declarations grounded upon a Bill, as the Declarations in the Court of the Kings Bench are, are amendable, if they be faulty. *Paſc. 24. Car. B.r.*

If

If a Declaration be drawn in one Terme, but is not delivered to the Defendants Attorney that Terme, but is delivered unto him, before the first Essoine day, of the next Terme after, this shall be accounted, for a Declaration of that Terme when it was drawn, and not of that Terme when it was delivered. *Trin.* 24. *Car. B. r. For before the Essoine day, the Terme as to such purposes, is not said to be begun.*

A Declaration may be filed in the Office, many years after it was first drawn: if it appear that it was onely the Attorneys neglect that it was not filed as it ought to have been. 24. *Car. B. r.* 19. *Apr.* 1648. *B. r.*

If bail be filed for the Defendant, the Plaintiff may declare against him, in any other matter besides the matter that is contained in the Writ brought by the Plaintiff against the Defendant. *Mich.* 24. *Car. B. r.*

The Defendants Attorney is not bound to receive a Declaration against his Clyent in the vacation time. *Mich.* 1650. *B. S. For proceedings in Law ought to be in the Term time.*

A Declaration delivered with a *Ly le*, is in the language and meaning of Attorneys, such a Declaration that is delivered, with leave for the Defendant to emparle untill the next Term. *Hill.* 1649. 12. *Feb B. S. The words by Ly le, do mean* Licentia inter loquendi, *which is as much as leave to emparle, or to advise and speak with his Clyent to know what he should plead for him.*

When one is arrested by a *Latitat*, or Bill of Middlesex out of this Court, he is not said to be in custody of the Marshall, untill he hath put in bail

to

to the Plaintiffs Action, and the bail be filled: and if from that time, the Plaintiff do not declare againſt the Defendant in three whole Termes after, which he cannot be compelled to do, then he muſt accept of common bail, and diſcharge the former bail. *Trin.* 1650. *B.S.*

The Plaintiffs Attorney is not bound to give a Copy of the Declaration againſt the Defendant, to the Defendants Attorney. 13. *Novem.* 1650. *B.S. For the Defendants Attorney may take a Copy of it out of the Office, where the Declaration is filled. Yet they uſually do it.*

It is not neceſſary for the Plaintiffs Attorney, to ſet his hand unto the Declaration, which he delivers to the Defendants Attorney: but the Defendants Attorney muſt receive it without his hand ſet to it: If he know him to be the Attorney in the Cauſe. 28. *Novem.* 1650. *B.S.*

If one be in cuſtody of the Marſhall of this Court, any perſon may put in a Declaration againſt him, and the Declaration ſo put in, is a good Declaration, and the party muſt plead unto it, although he be illegally in cuſtody, for the Court will not trouble themſelves to enquire how the party came into Priſon. *Paſc.* 1652. *B.S.*

If a Priſoner be brought into the Court of the upper-Bench by a Writ of *Habeas Corpus*, to anſwer a Suite there depending againſt him, a ſtranger cannot declare againſt him there upon the by, untill he be in cuſtody of the Marſhall: but he that brought the Priſoner thither, by the *Habeas Corpus* may declare againſt the Priſoner in Court, before he is turned over in cuſtody to the Marſhall. *Paſc.* 1652. *B.S.*

One

One ought not to declare against a Defendant in this Court, untill his bail be filed. By *Rolle* Chief Justice. *Pasc.* 1652. *B. S. That is, if he do put in bail.*

Duty.

The words *foris faceret*, may create a Duty. *Hil.* 21. *Car. B. r. For the party to whom a thing is forfeited, hath an intrest in the thing forfeited, before he recovers it.*

Dammages.

Dammages ought not to be given for that which is not (at all) contained in the Plaintiffs Declaration: or for that which is immaterially alledged, or against Law: but onely for that which is materially alledged, and set forth in the Declaration. *Hill.* 21. *Car. B. r.* 23. *Car. B. r.*

Where an Action upon the Case, and an Action of trespass, are both founded upon one and the same Dammage done to the Plaintiff, he may recover joynt Dammages upon both the Actions. *Hill.* 21. *Car. B. r.*

Where a trespass, for which an Action is brought, is entire, and not severall trespasses, there ought not to be severall Dammages given against the Defendant. *Mich* 21. *Car. B. r.*

Where one joynt Action of trespass is brought for two severall trespasses, and the trespasses are found severally, the Dammages may be severall: but, if one Action of Trespass be brought against three Trespassers, and two of the Trespassers against whom the Action is brought be found guilty, and the third is found not guilty, there the Dammages may notwithstanding

withstanding be intire. *Mich. 22. Car. B. r. For the trespass is but one joynt trespass, though the Action be brought against divers persons: But in the former Case, there are severall trespasses found, and so the Dammages may be severall, though the Action be a joynt Action.*

In an Action upon the Case, the Jury may finde less Dammages, then the Plaintiff layes in his Declaration: but they cannot finde more then is laid in the Declaration. *Mich. 22. Car. B. r. For the Law presumes, that the Plaintiff doth best know how much he is dammified by the Defendant: and therefore, though it may be, the Plaintiff will pretend he is more dammified then in truth he is, (as is often done,) yet it shall not be presumed that the Plaintiff will say he is less dammified by the Defendant, then in truth he is. And therefore, for the Jury to give more Dammages then the Plaintiff declares upon, would be unreasonable, which the Law will not suffer.*

Double Dammages given for one and the same Trespass, are not well given. *Mich. 22. Car. B. r. For the Law uses to proportion the amends or satisfaction for an injury done, according to the loss which the party to whom the injury is done, doth receive by the injury.*

Upon a judgment given upon a demurrer, upon an Action of the Case, the Court is not to assesse the Dammages, but the Jury is to do it. *Mich. 22. Car. B. r. For the Court gives the judgment upon the matter in Law, but the Dammages are to be given upon consideration of the matter of fact, which is proper only for the Jury to enquire of.*

In an Assize, the Jury ought to give Dammages pending the Suit, because there is no remedy over to

the Dammages, as in an *Ejectione firmæ*, but finall Dammages are to be given. *Pasc.23.Car.B.r.*

Upon a demurrer to an evidence, the Court did direct the Jury, who should have tried the issue, if the demurrer had not been, to finde Dammages for the Plaintiff, if upon arguing the demurrer the Court should give judgment for him. *Pasc.23. Car. B.r. For the Jury may consider of the matter in fact, which should have been tryed, if the evidence had not been demurred unto.*

Where Dammages are found severally, the Plaintiff may relinquish part of the Dammages, and enter his judgment for the rest. *Hill.23. Car.B.r. But where the Dammages are entire, he may not do it without leave of the Court.* Pasc.24. Car.B.r. & 19. Ap. 1648.

The Jury ought to finde Dammages in a speciall verdict found in an Action of Trespas and Ejectment; for untill the Plaintiffs Title is found, which is not done by the speciall verdict, the Plaintiff shall be accounted a Trespasser against the Defendant; because the Defendant was in possession of the Land, when the Plaintiff entred and made the Lease of the Land. *Pasc.24.Car.B.r. For he that is in possession of Land, hath title to it against all the World, until a better title is proved.* Melior est conditio possidentis.

Where a debt sued for, doth appear certainly to the Court what it is, there if the Plaintiff recover, the Court doth tax the Dammages, and not the Jury: but where it doth not appear certainly to the Court, there it is left to the Jury to enquire of and to tax them. *Trin.24 Car.B.r.*

A Writ of Enquiry of Dammages in a Cause tryed

in the Mareſchals Court, may be executed by the Judges in the Court there. *Trin. 24. Car. B. r.*

Greatr Coſts and Dammages may be given *in ſome Caſes*, then the Dammages laid in the Declaration. *Trin. 24. Car. B. r. For the Plaintiffs Declaration is only for the Dammages due unto him, by reaſon of the injury done him by the Defendant. But the Coſts are given in reſpect of the Plaintiffs expences in his ſuit to recover the Dammages.*

In a *Replevin* brought, and a ſpeciall verdict thereupon found, Coſts and Dammages ſhall be given on either ſide, according as the iſſue ſhall be found.

If a judgment be given upon a *nihil dicit*, in an Action of Debt brought in the Common Plea, that Court will give Coſts and Dammages, and ſo is it uſed to be done in inferior Courts. *Trin. 24. Car. B. r. But Q. whether it be ſo in this Court.*

If entire Dammages be given in an Action brought for divers ſeverall things, whereas it is not poſſible to have Dammages for ſome of them, the Dammages ſhall be accounted to be given for thoſe things only for which Dammages may be given, and the expreſſing the other things ſhall be accounted idle and void. *Trin. 24. Car. B. r.*

If an Action of Treſpaſs be brought, and the Defendant pleads, and the Plaintiff joyns iſſue with the Defendant, and after iſſue joyned he is non-ſuit, he ſhall pay the Defendant Coſts, for his falſe vexation of him, by the Stat. of 4. *Jac. And upon very good reaſon; For it ſhall be intended, that if he had had good cauſe of Action againſt the Defendant, that he would not have become non-ſuit.*

When a judgment is given by default, then the Court doth aſſeſſe the Dammages, and not the Jury.

Mich. 1649. *B. r. For there is no issue tryed.*

If an Action of Trespas be brought against divers persons, and some of them plead to issue, and others do not, and the issue is found for the Plaintiff, and Dammages are given as well against those that joyned not in the issue, as against them that joyned in the issue; these Dammages are well given. *Mich.* 1649. *B.S. For the Trespas is found, and that the Plaintiff was damnified so much by reason thereof.*

If Dammages be assessed, and it is not expressed that they are assessed, *pro Missis & Custagiis*, this is erroneous; for it doth not appear by the Record, for what the Dammages are assessed as it ought to do. *Hill.* 1649. 31. *Jan. B.S. For Records ought to be certain and not ambignous.*

All Costs are given *ex assensu partium*, (that is) by the consent of the Plaintiff and the Defendant. *By* Woodward Clarke. *Hill.* 1649. 4. *Feb. B.S.*

If the Defendant, whose title is concerned, in an *Ejectione firmæ*, will not defend his title to the Land in question, and the verdict do pass against the Plaintiff, the ejector may release the Dammages. 11. *Feb. Hill.* 1649. *B.S. For they do properly belong to him.*

One that sues in *forma pauperis*, if the Cause go against him, yet he shall pay no Costs, if he were admitted to sue in *forma pauperis*, in the suit which passeth against him, before the suit began: but if he were admitted to sue in *forma pauperis, pendente lite*, (that is) whilst the suit depended, he shall pay Costs. *By* Rolle *Chief Justice: who said, it has been so (antiently) held and ruled.* 16. Nov. 1650. B.S. *But Q what Costs, whether the Costs of the whole suit, or only with relation from the time he commenced*

commenced his ſuit, to the time he was admitted to ſue in Forma pauperis.

In a Writ of Dowr, if the Plaintiff recover, and yet doth not deſire a Writ of enquiry of Dammages to recover the Dammages, the Court may tax the Dammages. 5. *Feb.* 1650. *B. S.*

The Court may encreaſe the Dammages, which are found by the Jury, upon a Writ of enquiry of Dammages, in an Action of Aſſault, Battery and Wounding; if they ſee cauſe, upon the view of the party that was beaten and wounded. *Trin.* 1651. *B. S. This was done in the Caſe of* Davis *Plaintiff, and the Lord* Foliot *Defendant.*

The Court will not compell the party that is non-ſuit in a Cauſe, to pay his Coſts upon the non-ſuit; but if the party will not pay them when they are taxed, the Court will not ſuffer him to commence his ſuit again untill he have paid them. *Paſc.* 1652. *B. S.*

After judgment is given in a Cauſe depending in this Court, the Court cannot make a Rule for the payment of the Coſts which were expended in proſecuting the ſuit. *By* Rolle *Chief Juſtice.* 1655. B. S. *For after judgment, the parties are out of Court, for the Cauſe is determined.* Q.

No other Coſts or Dammages ſhall be given upon a Recovery, in an Action brought upon the Statute of 2° *Edw.* 6. for not ſetting forth of Tythes, than the Dammages which are expreſſed in the Statute, which is treble dammages. 1655. *B. S. For the courſe of the Common Law, in ſuch caſes is altered by the Statute, and it ſhall be intended, that the Plaintiff hath better ſatisfaction thereby.*

Deputies.

The Common Law doth in many Cases take notice of Deputies, but it doth never take notice of under-Deputies. *Trin.* 23. *Car. B. r. As of the under-Sheriff, who is but the Sheriffs Deputy, sub-Almoner, or Deputy-Almoner. For in many Cases, an Officer may by Law make a Deputy; but a Deputy hath no power to depute another under him.*

The King by his speciall Commission may make Deputy Escheators, to finde an Office, after the death of an Honourable Person. *Pasc.* 24 *Car. B. r. As of a Duke, Earl, Marquess, Viscount, Baron, &c. Q. Whether in some speciall Case, he may not do it after the death of one that is not of the Nobility. It seems he may.*

Default.

Before a verdict is taken by Default, the Cryer of the Court doth call the Defendant three times; and then if the party do not appear, the Plaintiffs Counsell doth pray the verdict may be so entred. *Hill.* 21. *B. r.*

Debt.

An Action of Debt doth lye against the Husband, for goods which were delivered as sold unto the Wife, because the Law doth intend, that they were employed and came to the use of the Husband. *Hill.* 21. *Car. B. r. And the Husband and Wife, are but one person in Law.*

If there be an erroneous judgment given for the Plaintiff in a personal Action in the Common Pleas, and thereupon he brings an Action of Debt against the

the Defendant upon the erroneous Judgement in this Court, the Action will well lye here, until the Judgement in the Common Pleas be reversed by a Writ of Error. 21. *Car. B. r. For an erroneous Judgement is not void but voidable. But when it is made void by a Writ of Error, then there is no ground to support the Action of Debt, so that then it cannot be maintained.*

If one do assume upon a consideration, moving from I. *S.* to perform a thing which concerns *A. B.* and do not perform it, *I. S.* may bring an Action of Debt upon the Assumpsit against him, that did so assum upon himself. *Mich.* 22. *Car. B. r. For the Action is grounded upon the promise made, and the not performing it to* I. S. *to whom it was made.*

In some Case, an Action of Debt will lye, though there be no contract betwixt the party that brings the Action, and him against whom the Action is brought. *Mich.* 22. *Car. B. r.*

An Action of Debt lies against a Sheriff for moneys which he hath levyed by vertue of a Writ of *fieri facias*, for the party that did recover the moneys; for the Law doth create a privity by the *fieri facias*, betwixt the Sheriff and the party that sued out the *fieri facias*. *Mich.* 22. *Car. B. r.*

If An Action of Debt be to be brought against an Administrator for Rent which was due by the Intestate upon a Contract made betwixt him and the Intestate in his life time; the Action must be brought in the County where the Contract was made; but if an Action of Debt be brought against an Administrator for Rent due for Lands, left by the Plaintiff to the Intestate, but growing due in the time of the Administrator, *viz.* since the Letters of Administra-

tion were granted unto him the Action must be brought in the County where the Lands do lye for which the Rent is due. *Mich. 22. Car. B. r.*

An *indebitatus assumpsit*, generaliy is not good to create a Debt, but there must something else be made appear to the Court to make a Debt to be due to the party that brings an Action of Debt, or else the Action will not lye. *Mich. 22. Car. B. r. For else to declare upon an* indebitatus assumpsit, *is no more then if the parties declared upon a* nudum pactum.

An Action of Debt doth lye for a Councellor, or for an Atturney for their Fees against the party that retained them. *Mich. 22. Car. B. r. Q. Whether it lie for a Counceller for his Fee, is* honorarium Quiddam, *and not* mercenarium, *a Gratuity rather then Wages or a Salary.* By *Rolle* Chief Justice.

An Action of Debt doth lie upon a perfect Contract in Law betwixt the parties, and not an Action upon the Case. 22. *Car. B. r. For generally where the Law directs a certain Action, there an Action upon the Case is not to be brought.*

An Action of Debt brought against an Executor, for Rent grown due in the time of the Executor, ought to be brought in the detinet and debet. *Hil. 22. Car. B. r. So then said to be adjudged in* Royton *and* Mees *Case. But if the Action be brought for Rent due in the life of the Testator, the Action ought to be brought in the detinet only.*

Where a certain sum of mony is to be paid upon an Obligation at several dayes of payment, expressed in the Condition of the Obligation, though the mony be not paid accordingly, yet an Action of Debt cannot be brought for any part of this money untill all the days of payment expressed in the Obligation

gation be paſt. *Paſc. 24. Car. B. r. Becauſe the penalty of the Obligation is to be recovered which is not wholly due untill the whole Condition be broken, which is not ſo untill the party fail in the laſt day of payment.*

If one deliver neceſſaries to an Infant, *viz.* meat, drink, or cloaths, and he promiſe to pay for them, an Action of Debt will lye againſt the Infant upon this promiſe if he perform it not. But if the party come to an account with the Infant for what is due unto him from the Infant, and thereby doth ſtate the ſum due unto him, an Action of Debt doth not lye againſt the Infant for the moneys ſtated to be due unto the party upon this account. *Trin. 24. Car. B. r.*

If a woman ſole be indebted, and then take a husband, the Debt is now thereby become the Debt of the husband and of the wife; that is to ſay, the wives proper Debt and the husbands Debt in the right of his wife, and the wife ought to be ſued for this Debt together with her husband, and if the husband dye, whereby the Action is abated, yet the wife may be ſued again for this Debt. *Trin. 24. Car. B. r.*

A Judgement was Reverſed in this Court by a Writ of Error, becauſe it was given to recover a Legacy. *Trin. 24. Car. B. r. For then a Legacy was not recoverable at the Common Law, but in the Eccleſiaſtical Court or in the Chancery. But now by a late Statute an Action lies for a Legacy at the Common Law. See the Statute.*

An Action of Debt doth not lie upon a Judgement given in this Court after the Record thereof is removed by a Writ of Error out of this Court into the Exchequer Chamber. *Trin. 23. Car. B. r.*

An Action of Debt doth not lie againſt an Executor which is grounded upon a ſimple contract made

made by the Teſtator. *Hill.* 1649. *Jan.* 31. *B. r.* 2.

And Action of Debt doth lie againſt a Goaler for ſuffering a priſoner in Execution to eſcape, by the party at whoſe Suit the Priſoner was committed in Execution. *Trin.* 1650. *B. r.* 15. *Junii.*

One may bring an Action of Debt for Rent in what County he pleaſeth. 9 *Nov.* 1650. *B. r. Becauſe it ſounds not in the realty.* Q.

If a judgement be given for the Plaintiff, in an Action of Debt in the Common Pleas, and afterwards the tranſcript of the Record is removed into this Court by a Writ of Error, yet the Plaintiff for whom the Judgement was there given, may bring an Action of Debt there, upon that Judgement; but if the Judgement be Reverſed in this Court upon the Writ of Error, and after the party proceed in the Common Pleas in his Action of Debt, the party againſt whom he thus proceeds, may bring his *Audita Querela* to be relieved againſt this ſecond Action. 3. *Feb.* 1650. *B. S. For by the reverſal of the Judgement the ground of the ſecond Action is deſtroyed.*

One may joyn two Debts due upon two ſeverall Obligations, from the ſame party in one Action of Debt. 6. *Feb.* 1650. *B. S. And declare in one Declaration upon the ſeveral Obligations.*

If one do deliver goods to *I. S.* to my uſe, if the party to whom they were delivered, do refuſe to deliver them unto me, I may have either an Action of Debt or an Action of Accompt for them, againſt him to whom there were delivered at my election 22. *Ap.* 1651. *B. S.*

Deeds.

Deeds.

Such construction ought to be made of a Deed, that it may agree with the intent of the parties to the Deed, if their intent do not contradict the Rule of Law. *Hil.* 22. *Car. B. r.*

A Deed of Indenture made betwixt two, ought to be Sealed and Delivered by both parties to the Indentures, otherwise is cannot be said to be a Deed indented. *Trin.* 23. *Car. B. r.*

If all the parts of a Deed may by Law stand together no one part of that Deed shall be so interpreted as to make either the whole Deed or any part of it to be voide. *Pasc.* 24. *Car. B. r.*

A Deed cannot be delivered as an escrew to the party himself, who is to take by the Deed. *Trin.* 24. *Car. B. r* 1650. *Trin. B. S. For the delivery of it makes it the parties Deed.*

If a Deed do say, *This Indenture made*, whereas the Deed is not endented, yet it may be a good Deed, for it may work as a Deed-Poll, though it cannot work as an Indenture.

If it do not appear by the Fabrick of a Deed, that Lands do pass by the Deed, by way of Feoffment; yet the Land may pass by it by way of use if there be a consideration, which is sufficient in Law to raise a use expressed in the Deed.

Ejectment.

IF one Seal a Lease of Ejectment to try a title of of Land, it is not necessary to give notice of the sealing of this Lease unto him whose title is concerned,

ed, but it is sufficient to give notice of the Lease to the Tenant or Undertenant of the Land in question. *Hil. 23. Car. B. r. For the possession of the Land is primarly in question in this Action, and is to be recovered and not the title of the Land, though the title of the Land do come in question and is tryed collaterally. But now by the new way of practice, it is not usual to Seal any Lease of Ejectment at all in an Action of Trespass and Ejectment, but the Plaintiff that intends to try the title, delivers a Declaration to an Ejector of his own making, and that Ejector sends or delivers the Declaration to to the Tenant in possession, who gives notice thereof to his Lessor, whose title is concerned to defend the title, and if neither the Tenant in possession, nor his Lessor will defend the title, then the Ejector will confess a Judgement to the Plaintiff, and so the Tenant will be stripped out of possession, but if they or either of them will defend the title, then it is usual for them to move the Court that they may be made Ejector to defend the title, which the Court will grant if they will Confess, Lease, Entry, and Ouster at the tryal, and stand meerly upon the title; and if at the tryal they do not, then Judgement to be entred against the Plaintiffes Ejector.*

If one do do occupy the Lands in question in an Action of Trespass and Ejectment, after the Ejectment Lease made to try the title of the Land is Sealed; this is an Ejectment in Law of the Lands in question. *Trin. 22. Car. B. r. For the keeping of possession of the Lands against him to whom they are let by the Lease doth amount to an Entry upon him, although he was never in possession of the Land let.*

If there be two Ejectors made in an *ejectione firmæ*, one of them may be found guilty of the Tref-

Trespass and Ejectment; and the other, as the case may fall out may be acquitted. *Trin. 22. Car. B. r.*

An Ejector in Law is any person that comes upon any part of the Land. *&c.* in the Ejectment Lease although it be by chance, and with no intent to disturbe the Lessee of the possession next after the Sealing and Delivery of the Ejectment Lease; and such an Ejector is a good Ejector, to bring an Action of *ejectione firmæ* against, to try the title of the Land in question. *Mich. 22. Car. B. r. 1650. B. S. And there is no prejudice to any person by having such an Ejector.*

He that is to try a title of Land by an Action of Trespass and Ejectment, ought not to make an Ejector of his own against whom he may bring his Action, or to consent, or agree with one to come upon the Land let in the Ejectment Lease, with an intent to make him an Ejector, and to bring his Action against him. *Mich. 22. Car. B. r. For by that means the Tenant in possession of the Land, was often put out of possession, by a Writ of* habere facias possessionem, *without any notice given either to him or his Lessor of the Suite. But now this is altered by the new way of practise formerly mentioned.*

In every *ejectione firmæ*, the Plaintiff ought to set forth in his Declaration, in what Parish the Lands in question do lie, that the *venue* may be from the place where the Lands do lie, and not from the body of the County, except it be when as the Lands in question do not lie in any Vill or Hamlet. *Mich. 22 Car. B. r. Or* lieu Conus, *for in all such causes, it is of necessity that the Jury be of the body of the County because there is not any more particular place from whence the* venue *may come.*

If

If one declare upon a Leaſe, in an *ejectione firmæ*, and that by vertue of that Leaſe, he was in poſſeſſion of the Lands thereby let unto him, untill that he was Ejected by the Defendant, it is ſuppoſed that the Leſſor that made the Leaſe unto him was alive at the time when he brought his Action. *Mich. 22. Car. B. r.*

An Ejectment or an Ouſter, is either an actual Ejectment, as when the Leſſee is actually put out of the Land let unto him, or elſe it is an Ejectment by implication of Law. *Paſc. 22. Car. B. r.*

An *ejectione firmæ* ought to be brought for a thing that is certain, and not of an incertain thing. *Paſc. 23. Car. B. r. For if the thing be unertain, the Sheriff cannot if the Plaintiff recover, know of what to deliver the poſſeſſion upon the Writ of* habere facias poſſeſſionem.

If the Plaintiff in an *ejectione firmæ*, do declare for a houſe lying in two Pariſhes, if the houſe do lye in either of the Pariſhes, and do not lye in both of them, yet is the Declaration good. *Paſc. 23. Car. B. r. For there is certainty enough in it.*

Although in an *ejectione firmæ* there be a Verdict and a Judgement againſt the Plaintiff, yet the Plaintiff may bring another Action of Treſpaſs and Ejectment for the Land. *Trin. 23. Car. B. r. He may bring divers Actions one after another if he pleaſe, for a Judgement in that Action is not final.*

By *Rolle* Chief Juſtice, It is doubtful whether an *ejectione firmæ* do lie *de uno croſto. Trin. 23. Car. B. r. For the incertainty of the Word* Croft, *what it is, and what it doth contain.*

If a Leaſe of Ejectment, to try the title of Lands in the poſſeſſion of *I. S.* be made to one, and after the

the Lease is made, the Wife of *I. S.* or the servant of *I. S.* do keep the possession of the Land for *I. S.* and *I. S.* do after this occupy the Land, *I. S.* is an Ejector against whom an Action may be brought to try the title of the Land. *Mich.* 23. *Car. B. r.* 24. *Car. B. r. Pasc.*

One who hath title to the Land in question in an *ejectione firmæ*, may upon motion to the Court be made a party to the Action, that he may thereby defend his title, if he will confess the Lease, Entry and Ouster. *Hill.* 23. *Car. B. S. Vid. Supra.*

If a Lease of Ejectment be made of a house and lands, occupyed with it, to try the title of them, and the wife of the occupyer of the house and land, continue in possession of the house, after the Ejectment Lease is made, she is an Ejector, as to the house, but not as to the Lands. *Pasc.* 1652.

He who is in any part of a Messuage, *viz.* in the Barn, Stable, Stall, *&c.* after the Lease of Ejectment Sealed and Delivered to try the title of the Messuage, is an Ejector for the whole Messuage. *Pasc.* 24. *Car. B. r.*

The owner of the Land may consent with the party that claims the Land to make an Ejector to try the title of it, if it be not a plot betwixt him and the Ejector. *Mich.* 24. *Car. B. r.* viz. *To strip the Tenant of the Land in possession, out of his possession of it; for the Law doth not countenance fraud.*

If divers persons come together upon the Land in question, next after the Ejectment Lease, to try the title of the Land, is Sealed and Delivered; it is in the election of the Plaintiff that intends to try the title, to bring his Action against which of them he pleaseth. 1650. *B. S. For if the Plaintiff have right,*

right, they be all Trespassors, and it is no wrong to bring the Action against any of them.

If a Lease of Ejectment be made to one to try a title of a house, and the Lessee to whom the Lease is made, go into the Entry of the house, to make his Entry by vertue of the Lease, and one that is in the house shut an inner door of the house, and keep the Lessee out of an inner room of the house; this is not an Ejectment, nor is that person such an Ejector as an Action may be brought against. *Mich.* 1650. *B. S. For when he is entred in at the door of the house, he is in possession of the house, and is not Ejected out of it, though he have not possession of the whole house.*

An *ejectione firmæ* doth not lie of a close of land without expressing either the name or the nature of the Land. *Hill.* 1649. 30. *Jan. B. S. Because it is not known certainly what is meant by a Close without some description of it, either by its name or nature. It was then said an* ejectione firmæ, *doth lye of a Croft of Land,* sed Q *for it was formerly doubted.*

If one Seal a Lease of Ejectment, and do thereupon give his Lessee possession of the Lands let, and the Lessee is not ejected at that time, the Lessee may enter into the Lands again at another time, and if the Lessee be then Ejected, he may bring an Action of Trespas and Ejectment upon this Ejectment. *Pasc.* 1650. *B. S.* 10. *Maii.*

An *ejectione firmæ* doth lye of a Cottage. *Pasc.* 1650. 12. *Maii.*

Evidence.

The Allegation of the Councel at the Bar, is no Evidence

Evidence to the Jury, but the matter which enſues upon this Allegation, to prove it is good Evidence upon a tryal at the Bar. *Mich. 22. Car. B. r.*

Witneſſes who are to be made uſe of, to give their Teſtimony at a tryal at the Bar, if by reaſon of ſickneſs or otherwayes they be not able to travel and come to the tryal, may by order of the Court be examined upon Oath touching their knowledge, in the Country where they live; and their Depoſitions ſo taken are to be admitted to be read as Evidence to the Jury at the tryal. *Mich 22. Car. B. r.*

Depoſitions taken in Chancery, may by order of the Court be read as Evidence to a Jury upon a tryal at the Bar by the Plaintiff, or the Defendant, or both, if the Depoſitions were taken in the cauſe which is to be tryed at the Bar, and between the ſame parties that are Plaintiff and Defendant in the tryal. *Mich. 22. Car. B. r. And ſo it is of Bills, Anſwers, Replications, &c. in Chancery.*

But if the parties that Depoſed in Chancery be living at the time of the tryal, they ought to be examined *ore tenus* in Court, and their Depoſitions are not in ſuch caſe to be made uſe of. *Paſc. 1650 B. 3.*

The admittance of one to be an Adminiſtrator in an inferior Dioceſs, is a Bar againſt the perſon that doth ſo admit him to give Evidence at a tryal, that the Inteſtate had not *bona notabilia* in divers Dioceſſes at the time of his death. *Mich. 22. Car. B. r. For ſuch Evidence would be contrary to what he hath formerly admitted.*

The Court will not permit the Jury upon a tryal at the Bar, to carry any wrightings with them out of the Court, as Evidence for them to conſider of,

but such as are under Seal, and have been proved in Court. *Mich. 22. Car. B. r. For others are of no credit.*

An Evidence given to a Jury, may be answered by the Councel, either by confessing and avoiding it, or else by encountring the Evidence given, with giving stronger Evidence and of greater credit on the other side. *Mich. 22. Car. B. r.*

A thing which is concluded in the Ecclesiastical Court which doth concern Lands, is not to be given in Evidence to a Jury at a tryal concerning those Lands. *Mich. 22. Car. B. r. For the Courts of Common Law are not to be guided by their proceedings.*

A person that may be admitted as a Witness, at a tryal may give words in Evidence to the Jury which were spoken to him by another person, who by the Rules of the Court might not be admitted as a Witness at the tryal. *Mich. 22. Car. B. r. For it is but matter of Evidence, and is left to the Jury how far they will give credit to them.*

It is not of necessity that a Deed or a Record given in Evidence to a Jury, be shewed in Court; but if it be proved that there was such a Deed, or such a Record as are given in Evidence, it is sufficient. *Trin. 23. Car. B. r. For a Deed or a Record may be imbezled or lost, and so not to be produced.*

The Judges of the Court cannot try a matter of Fact in question, upon a Demurrer to an evidence; and therefore the Plaintiff and the Defendant must agree upon it and confess it. *Trin. 23. Car. B. r. For else the Court will not proceed to deliver their opinions touching the matter in Law Demurred upon.*

Matter

Matter in Law ought not to be given in Evidence at a tryal, but onely matter of Fact is to be given in Evidence, and the matter in Law, if there be any that is disputable, is to be reserved to be spoken to in Arrest of Judgement. *Trin. 23. Car. B. r. For the Jury are onely to try matters of Fact.*

If a Fem Covert acknowledge a thing at a tryal, which is for the advantage of her husband, but is for her own disadvantage, yet this is no good Evidence to a Jury. *Mich. 23. Car. B. r. For her husbands present advantage, is Hers also, and is more looked upon then her future disadvantage.*

The Defendants Councel ought to conclude by way of answer to the Evidence that is given unto the Jury by the Plaintiffs Councel. *Pasc. 24. Car. B. r. For if the Plaintiffs Councel doth begin the Evidence, it is reason the Defendant should speak last, because he is upon the defensive part, and is to give an answer to all that is said against him in matter of Evidence, but the Plaintiffs Councel is to sum up his Evidence last to the Jury.*

An ancient writing that is proved to have been found amongst Deeds and Evidences of Land may be given in Evidence to a Jury, although the executing of it cannot be proved. *Mich. 24. Car. B. r. For it is very hard to prove things that are very ancient, and the finding them in such a place, is a presumption, that they were preserved as things of value and to be made use of.*

A writing that is permitted to be read, to prove one part of an Evidence given to a Jury, may be read to prove any other part of the whole evidence to be given. *Mich. 24. Car. B. r.*

If the Plaintiff or Defendant will give some part of an

answer in Chancery in Evidence to a Jury, the Court may order that the whole answer be read. *Mich. 24. Car. B. r. That the Court and the Jury may the better consider what it makes to the Evidence, and it may be if part onely be read, it may prove good Evidence for the party, whereas the whole answer taken together may be against him.*

He that takes out a Copy of part of a Record, out of any Office, with intent to give the Copy in Evidence to a Jury, must take out so much of the Record, at least, as doth any wayes concern the matter in question at the tryal, or else the Court will not suffer such Copy to be read in Evidence to the Jury. *Pasc. 1650. 2. Mais. B. r. For if it be not so taken out, it cannot be sworn to be a true Copy of so much of the Record as concerns the matter in question, which is to be done before it can be read.*

A transcript of a Record which is in another Court, or an Enrolement of a Deed may be given in Evidence to a Jury. *Mich. 1649. B. S. For they are things to be credited, being made by Officers of trust.*

Upon a tryal at the Bar, the Councel of that party who doth begin to maintain the Issue, that is, to be tryed whether it be the Councel of the Plaintiff, or the Councel of the Defendant ought to conclude the Evidence. *Pasc. 1650. 11 Mais. B. S.*

If any one of the Jury that is sworn to try the Issue, be desired to give his Testimony concerning some matter of Fact that lies in his particular knowledge, and concerns the matter in question as Evidence, to his fellow Jurors, the Court will have him examined openly in Court upon his Oath, touching his knowledge therein, and he is not to deliver his Testi-

Testimony in private unto his fellow Jurors. 31. *Oct.* 1650. *Mich. B. S. For the Court and Counsel on both parts, are to hear the Evidence as well as the Jury.*

In the case of *Miller* Plaintiff, and *Columbine* Defendant, upon a tryal at the Bar, in an Action of Trespas and Ejectment. It was said by *Rolle* Chief Justice, *That an Office which is found after the death of one that died Seised of* Capite *Lands, in a County wherein the Lands found in that Office, do not lye, but in another County, may notwithstanding it was not found in the County where the Lands do lye, be given in Evidence to a Jury that is to try the title of those Lands, if there was a special Livery granted unto the Heir of those Lands.* 1654. B. S.

The Jury may view Depositions taken in Chancery, if they be exemplified under the great Seal, and they may also have them with them from the Bar, to consider of as part of the Evidence; but if they be not exemplified under the great Seal, they may only look upon them at the Bar, but not have them with them out of Court. 1655. *B. S.*

If one do produce a Lease made upon an Out-lawry, in Evidence to a Jury to prove a title; he must also produce the Out-lawry it self, but if he produce the Lease to prove other matter, he needs not to shew the Out lawry, but may have the Lease onely read in Evidence, and so it is of an extent without shewing the Statute or Judgement on which the extent is grounded. So held in a tryall at the Bar between *Johnson* and *Spencer*. *Pase.* 1655. *B. S.*

By *Glyn* Chief Justice, it was said, *That all the Judges have agreed, that upon the Meal Act, the Defendant shall give matters in Evidence to the Jury*

which do onely tend to prove the Iſſue in queſtion, and no other matter. Trin. 1653. *B. S. For that all is ſo miſchievous, that it is no way to be favoured.*

Emparlance.

If the Plaintiff do amend his Declaration at any time after it is delivered to the Defendants Atturney, or after it is filed in the Office in any thing that is matter of ſubſtance, the Defendant may by the Rules of the Court, Emparle to the next Term after that the Declaration is ſo amended, if the Plaintiff do not pay coſts to the Defendant for his amendment; but if the Defendant do accept of Coſts of the Plaintiff, then the Defendant cannot Emparle. *Mich.* 22. *Car. B. r.*

In what Term ſoever a declaration comes in againſt the Defendant, the Defendant may by the Rules of the Court Emparle to the next Term after, before he can be compelled to plead. *Mich.* 22. *Car. B. r. For the Law doth not force any one to do any thing raſhly and without advice, but gives the party time to deliberate what to anſwer for himſelf.*

Where the Defendants Caſe doth neceſſitate him to plead a ſpecial Plea, and the matter is difficult which is to be pleaded; the Court upon a motion made to inform them of it, will, if the Defendant deſire it, grant him longer time to Emparle and put in his Plea, then otherwiſe by the Rules of the Court he ought to have. *Hill.* 22. *Car. B. r.*

Where the Plaintiff doth keep any Deed or Writting, or other thing from the Defendant, which doth belong unto him, and whereby he is to make his Defence, and is diſabled by the detaining thereof to

plead

plead for his best advantage; the Court upon motion and information thereof, will grant an Imparlance to the Defendant, until the Plaintiff do deliver it unto him, and a convenient time after, till he can draw up his Plea. *Hill. 22. Car. B. r. For the Law doth give every Defendant convenient time to make his best defence.*

If the Plaintiff alter the *venue* from the place where he first laid it, the Defendant may Emparle to the next Term after. *Trin. 23. Car. B. r. For thereby he may be forced to alter his Plea.*

If the Plaintiff do declare against the Defendant, but doth not proceed further thereupon for three whole Terms after, the Defendant may Emparle to the next Term by the Rules of the Court. *Hil. 23. Car. B. r.*

If the Plaintiff amend his Declaration, and pay Costs to the Defendant, the Defendant may not Emparle, but if the Plaintiff give the Defendant a new Declaration, or do so amend the old Declaration, that it is upon the matter a new Declaration, then the Defendant may Emparle. *Mich. 1654. B. S.*

By *Rolle* Chief Justice, If the Plaintiff and the Defendant have proceeded so far, as to Issue in the Cause, and after that the Defendant do amend his Plea, the Defendant shall pay the Plaintiff Costs, yet the Court will not grant an Emparlance unto him, although the cause be not entered in the Judges book for tryall, if there be warning given to the Defendant of the tryal. *1655. B. S.*

Executor.

If one be indebted to *I. S.* in a certain summe of mony, and *I. S.* makes his Will, and deviseth this

debt due unto him, unto *A. B.* and makes *I. L.* his Executor and dyes; this debt deviſed unto *A. B.* muſt be paid unto *I. L.* the Executor, and not to *A. B.* the deviſee. *Mich.* 22. *Car. B. R. For the Executor and not the Deviſee can give a ſufficient diſcharge for the debt.*

• If a *Scire facias*, be brought againſt an Executor, to ſhew cauſe why he ſhould not pay a Debt unto the Plaintiff recovered againſt the Teſtator; the Executor cannot plead fully Adminiſtred, but he muſt plead that no goods of the Teſtators are come to his hands whereby he might diſcharge the Debt. *Mich.* 22. *Car. B. r. For he may have fully Adminiſtred, and yet be liable in Law to pay the debt demanded upon the* Scire Facias.

An Executor which hath Adminiſtred goods of the Teſtator as Executor, or that is Executor of his own wrong, by diſpoſing of the goods of the party deceaſed, without authority given unto him, cannot waive a term of years for Land, *&c.* of which the deceaſed dyed poſſeſſed of. *Mich.* 23. *Car. B. R. For he hath charged himſelf to be anſwerable to all perſons concerned, as far as the deceaſed parties perſonal eſtate will amount unto. But if he have not Aſſets, he may waive the Term.* Trin. 24. Car. B. r.

An Executor of his own wrong, is not by Law chargeable for more then the value of the goods of the deceaſed doth amount unto, and which did come unto his hands, and with which he hath intermedled. *Mich.* 23. *Car. B. r.*

The word Executor, is a word collective, and doth comprehend in it, the Executor of an Executor. *Hill.* 23. *Car. B. r. For he is accomptable for the firſt Teſtators goods.*

An

An Executor may recover a duty which was due to the Teſtator, although the Executor was not named in the creation of that duty. *Trin. 24. Car. B. r. For he repreſents the very perſon of the Teſtator.*

An Executor may be charged upon a Collateral promiſe made unto the party by the Teſtator, if the promiſe was broken in the life time of the Teſtator, elſe not. *Mich. 149. B. S.* And 16. *April. 1650. B. S.*

Eſcape.

An Adminiſtrator may bring an Action of Eſcape, for an Eſcape ſuffered of a Priſoner of the Inteſtate in his life time. *Trin. 23 Car. B. r.*

An Eſcape in one place is an Eſcape in all places, ſo that for an Eſcape, the party whoſe priſoner is eſcaped, may bring an Action for this Eſcape in what County he pleaſeth, for the Action is not Local or fixt to any certain place. *Trin. 24. Car. B. r. But tranſitory.*

Endictment.

An Endictment that is framed upon a Statute, ought to purſue the words of the Statute. *Trin. 23. Car. B. r.*

The Juſtices of Aſſize will ſtay the proceedings againſt a perſon for a thing done by him, during the time of war, and in relation to the war. *Trin. 23. Car. B. r. For Indictments are to be preferred againſt perſons that act any thing in the diſturbance of a peaceable and ſetled Government.*

If any one be perjured in an Affidavit made in any Court of Record, touching any Cauſe depending in that Court, an Indictment may be preferred againſt him

him for this perjury upon the Statute. *Trin.* 23. *Car. B. r.*

An Indictment of forcible Entry, doth not lye upon the Statute of 8. *H.* 6. against one for entring forcibly into a Copy-hold, but an Endictment doth lye in such a Case, by the Statute of 21. *Jacob. Hill.* 23. *Car. B. r.*

Although exceptions be taken against an Endictment, to the intent the Court should quash it, yet the Court will grant time to maintain the Endictment unto the Kings Councel, if they desire it. *Hill.* 23. *Car. B. r.*

The Court doth not usually quash Endictments for perjury, although the Endictments be faulty, but will put the party to plead to the Endictment. *Hil.* 23. *Car. B. r. For perjury is counted a great offence, and therefore the Court doth not favour such offenders.*

An Endictment ought to be more certain then common pleadings in Law need to be. *Hill.* 23. *Car. B. r.*

An Endictment ought to express the year of our Lord in which it was taken. *Hill.* 1649. 30. *Jan. B. r.*

If an Endictment be drawn so generall and so uncertain, that the party Endicted cannot tell how to make a certain answer unto it, such an Endictment is not good, but may be quashed. *Pasc.* 24. *Car. B. r.*

If a word be left out in an Endictment, which is but onely in matter of form, yet the Endictment is good, but if be in matter of substance, it is not good. *Trin.* 24. *Car. B. r.*

If one be Endicted for doing of any thing, for which

which he is not by the Law to be Endicted for, as for the encloſing of a Common, or ſome other Treſpas for which an Action at the Common Law, is to be brought; ſuch an Endictment is not good, but may be quaſhed. *Paſc. 24. Car. B. r.*

If one do interrupt a long continued poſſeſſion of Lands by an unlawful means, and the perſon that is ſo interrupted of his poſſeſſion, do regaine his poſſeſſion by unlawful means alſo, yet an Endictment of forcible entry doth not lye againſt him for doing thereof. *Mich. 24. Car B. r. For the Law favours long poſſeſſions, and doth not countenance the diſturbers of them.*

In moſt Caſes the Endictment for a Fact done, ought to be laid in that County where the Fact was done. But this holds not in all Caſes. *Mich. 24. Car. B. r.* And *Mich. 25. Oct. 1650. B. r.*

If one be Endicted at a Seſſions in *London*, or in any other County, and the party Endicted, do remove the Endictment by a *Certiorari* into this Court, and do not thereupon quaſh the Endictment, the party that did remove it, ought by the Rules of the Court, to try the Endictment at his own coſts the next Term after that the Indictment is removed. 13. *Nov.* 1650. *B. S.*

Expoſition.

The beſt Expoſition of the Statute Law, is to be had by the conſulting with the makers of them, and how they did in their times interpret them. *Hill. 23. Car. B. r. For they knew beſt for what end they made the Statutes.*

Contemporanea expoſitio legis eſt optima.

The word *videlicet* in a Deed, is put to expound or make

make plain the premisses of the Deed in which it is put, and therefore that which it brings in, ought not to be contrary to it, for if it be, the *videlicet* is void. *Pasc.23. Car. B.r.*

If all the words of a Deed can stand together without any absurdity, the Law will make such an exposition of them, that the whole Deed may be good in Law. *Pasc.24. Car. B.r.*

Election.

An Action of Trespas upon the Case, or an Action of Trespas *vi & armis*, may be brought against one that doth rescue a Prisoner, at the Election of the party who is damnified by this rescous. *Pasc.24.Car. B.r. Yet the judgments are different in these two Actions.*

Where one may bring an Action of Wast, for Trees cut down upon his Land, it is at his Election to bring an Action of Wast, or else an Action of Trover and Conversion for the Trees. *Mich. 24. Car. B.r. But both he cannot bring.*

An Action upon the Case, or an Assize, doth lye against him that doth surcharge a Common, at the Election of him that is injured thereby. *Mich.1649. B.S.*

If a Prisoner escape, that lyes in prison upon an execution; an Action of Debt lyes against the Goaler that suffered this escape, for the party at whose suit he was in execution: but if he were not a prisoner in execution, and do make an escape, it is in the Election of the party at whose suit he was a prisoner, either to bring an Action upon the Case, or an Action of Debt against the Goaler for this escape. *Trin.1650. 25. Junii. B.r.*

If

If the Plaintiff amend his Declaration, it is at his Election, either to pay the Defendant Costs for this amendment, or to give the Defendant an emparlance to the next Terme after the amendment; and the Defendant cannot hinder this Election. 7. *Feb.* 1650. *For the Defendant is at no prejudice by it.*

Estople.

A recitall in an Obligation is an Estople, against which he that made the Obligation shall not be permitted to plead any thing to the contrary, if an Action be brought against him upon this Obligation. *Pasc.* 24. *Car. B. r. For that were to contradict his own act and Deed.*

If one enter into an Obligation by the title of an Esquire, whereas in truth he is a Knight; if an Action be brought against him upon this Obligation, and he is named an Esquire, he shall be Estopped to say in his Plea, that he was not an Esquire, but a Knight, at the time he entred into the Obligation, in abatement of the Writ. *Hil.* 1649. B. S. *For* constat de persona, *that he was by his own admission the same person that entred into the Obligation; and did then admit the title of Esquire to be his true addition.*

Where one hath liberty to confess and avoid the matter which the Plaintiff doth set forth in his Declaration against him, there he cannot be Estopped to plead such matter for his defence. 29. *Jan.* 1649. *Hill. B. S.*

Extinguishment.

If one have used to hold a Court by Custome (as by Law he may) if he do afterwards purchase Letters Pattents, to enable him to hold this Court; he hath thereby

thereby extinguished the Custome, and must now hold the Court by vertue of his Letters Patents. *Mich. 24. Car. Ber. For the party hath thereby waived the Custome, and hath made Election to hold his Court by another Authority.*

Error.

If a Writ of Error be brought to reverse a judgment, and afterwards this Writ of Error is discontinued for want of prosecution of the party; yet execution cannot be had upon the judgment, untill this discontinuance of the Writ of Error be certified from the Court where the Writ of Error is discontinued, unto the Court where the judgment was given. 21. *Car. Ber.*

If a Writ of Error be brought meerly to stop execution upon the judgment given, and without any probable matter of Error to be alledged against the judgment, and this doth appear unto the Court where the Writ of Error is brought; the Court will not hinder execution to be awarded upon the judgment, notwithstanding the bringing of the Writ of Error to reverse it. 21. *Car. Ber. For the Law doth require speedy justice to be done.*

The assignment of the generall Error upon a Writ of Error brought, is to say, that the Declaration was insufficient, and that judgment was given for the Plaintiff, whereas it ought to have been given for the Defendant, and such like generall frivolous matters, without alledging any particular colourable matter of Error in the judgment. 21. *Car. B. r.*

A Writ of Error doth lye for one that is committed by a Justice of the Peace, for a forcible entry committed by him. *Trin. 22. Car. Ber. For the commitment*

mitment is grounded upon a judgment given by the Justice against the party committed.

All parties that are grieved by an erroneous judgment, may joyn in a Writ of Error to reverse the judgment: but persons that are not damnified by it, cannot joyn with others that are damnified by it, to reverse it. *Mich. 22 Car. B. r. For the Law will not favour any to sue who have no cause.*

The Bail cannot joyn with the Principall in a Writ of Error, to reverse a judgment given against the Principall. *22. Car. B. r. For the principall must reverse the judgment alone if it be erroneous, because it was only given against him, and not against the Bail.*

Errors to a judgment ought to be assigned upon the Record. *22. Car. B. r.*

No person shall be compelled to bring a Record into the Court, to make an Error in another Record. *Mich. 32. Car. B r. For the Law doth favour matters of Record, and will affirm them rather then question them, without apparent cause shewn.*

If a judgment given in an inferior Court be entred in this manner, *ideo consideratum est*, and the words *per curiam*, are omitted, as they ought not to be the judgment is erroneous: but if a judgment given in a superior Court, *viz.* in any of the Courts at *Westminster* be entred, and the words *per curiam* are omitted, yet the judgment is not erroneous. *Mich. 22. Car. B. r. For inferior Courts, are tied to observe their antient forms of proceedings, and not to vary from them.*

He that hath obtained a judgment, if he finde that it is Erroneous, may move the Court to have it reversed for his own dispatch; which the Court will do when

when they are satisfied what the Error is. *Mich.* 22. Car. B. r. *For till such a judgment is reversed, the Plaintiff cannot bring a new Action for the same Cause for which that judgment was given: for if he should, the Defendant may plead the judgment in barr of his second Action.*

If the Defendant, after judgment given against him, do bring a Writ of Error to reverse the judgment, but doth not certifie the Record into this Court in reasonable time, the Court will grant that the Defendant may have execution upon the judgment; but he is not bound to certifie the Record the same Terme in which he brings his Writ of Error, but if he do it the next Terme after, it is sufficient. *Mich.* 22. *Car. B. r.*

If a judgment be given in any of the Cinque Ports, if the Defendant will bring a Writ of Error to reverse it, he must bring his Writ of Error before the Warden and Constable of *Dover*, and not in this Court. *Mich.* 22. *Car. B. r. This is one of the Priviledges that belong unto those that inhabit within any of the Cinque Ports, or members thereof.*

If an erroneous judgment be given in any of the Sheriffs Courts of the City of *London*, the Writ of Error to reverse this judgment, must be brought in the Court of Hustings before the Lord Major, *Hil.* 22. *Car. B. r. For that is the Superior Court.*

A Writ of Error that is brought in the Parliament, is made returnable immediately. *Pasc.* 23. *Car. B. r.*

A Writ of Error to reverse a judgment, ought not to be brought before the judgment is signed. *Pasc.* 23. *Car. For before it is signed it is no judgment, and the Writ of Error runs thus,* Si judicium sit redditum.

Yet

Yet it is usual to do it in inferior Courts.

Q. *Whether the Heir may bring a Writ of Error, to reverse an erroneous Judgement given in a personal Action, which Judgement doth charge the Lands of the Heir,* Trin. 23. Car. B. r.

He that brings a Writ of Error to reverse a Judgement ought by the Statute to put in good Suerties to pay the debt recovered and the charges of the Judgement, and those that shall be caused by bringing the Writ of Error; in Case the Judgement shall be affirmed and not reversed upon the Writ of Error. *Trin. 23. Car. B. r. For it is reason the party should have recompence for his causeless vexation and delay.*

When a Writ of Error is brought to reverse a Judgement, the party that brings the Writ must cause the Roll where the Judgement is entred to be marked, whereby the other party may take notice upon Record, that the Writ of Error is brought; and this marking of the Roll is a *Supersedeas* in it self, to hinder Execution to be taken out upon the Judgement, but if the Roll be not marked, Execution may be taken out upon the Judgement, notwithstanding the Writ of Error; but if Execution be taken out after it is marked, the party grieved may have a *Supersedeas, quia erronice emanavit,* to make void the Execution. *Mich. 23. Car. B. r.*

It is not usually for the Court of Common Pleas, upon a *certiorari*, directed to them upon a Writ of Error brought to reverse a Judgement given in that Court to Certifie the Record into this Court; to Certifie the Original Writ, upon which the Action was commenced there, for that Writ is to remain with the *Custos brevium* of that Court. *Mich. 23. Car. B. r.*

A Writ of Error is not to be brought in Parlia-

ment to reverse a Judgement given in the Common Pleas, but the Writ of Error ought to be brought in the Court of the Kings Bench. *Hill.* 23. *Car. B. r.*

The Chief Justice onely, and not any other of the Judges of the Court ought to allow a Writ of Error that is brought. *Hill.* 23. *Car. B. r.*

If a Judgement given in this Court be erroneous in matter of Fact onely, and not in matter in Law, a Writ of Error may be brought, in this Court where the Judgement was given to reverse it; and it it is not necessary to bring a Writ of Error in Parliament; but if the Judgement be erroneous in matter in Law, then a Writ of Error cannot be brought in this Court to reverse it. *Pasc.* 24. *Car. B. r.* 1650. *B. S. For error in fact is not the error of the Judges, and therefore the reversing of a Judgement given by them which is onely erroneous in matter of fact, is not the reversing their own Judgement, but it is otherwise if the Judgement were erroneous in matter in Law.*

A Writ of Diminution in a Writ of Error, ought not to be granted to be directed to an inferior Court. *Trin.* 24. *Car. B. r.*

If he that doth bring a Writ of Error, do discontinue his Writ, before the Defendant in the Writ of Error do plead unto it; he may have a new Writ of Error, but if he discontinue his Writ, after the Defendant hath pleaded to it, he cannot have a new Writ. *Mich.* 1649. *B. S.*

If by any possibility there may be supposed to be error in the Record, any person that may be damnified by this error may bring a Writ of Error to reverse it. *Hill.* 1649. *B. S. For although*

he

be be not named a party to the Record, yet the Law hath made him a party to it, by ſubjecting him to dammage by it, and it is therefore reaſon he ſhould be permitted to uſe all lawful means to defend himſelf from it.

A Judgement may be an erroneous Judgement, although it be not given for the Plaintiff, but the Defendant is thereby acquitted; for it may be erroneous in the entry of it, for in may it is entred with a *Capiatur* againſt the Plaintiff, whereas it ought to be in *Miſerecordia pro falſo Clamore. Hill.* 1649. *B. S.*

A Writ of Error is not like another Writ, for a Writ of Error may be abated as to one perſon, and yet may ſtand good as to another perſon, and ſo cannot another Writ. But if the Writ of Error be brought in a Caſe where it will not lye, it muſt be abated in the whole. *Hill.* 1649. *B. S.* 27. *Jan. For there is no ground for the Writ.*

All the parties, privies to the Record may joyn in a Writ of Error to reverſe it, if it be erroneous. *Hill.* 1649. *B. S.*

A Writ of Error may be brought to Reverſe a Judgement before a Writ of Enquiry of dammages, which Iſſues out upon the Judgement, be executed. *Hill.* 1649. 2. *Feb. B. S.*

Q. The party who is to have benefit by a Judgement, may bring a Writ of Error to reverſe it, as well as the Defendant. *Hill.* 1649. *B. S.* 4. *Feb.*

If a Writ of *habere facias poſſeſſionem*, to deliver poſſeſſion to the Plaintiff, of Lands recovered by him, in an *ejectione firmæ* doth contain in it more Acres of Land, then were contained in his Declaration the Writ is erroneous; but if the Sheriff do deliver poſ-

session of more Acres of Land then are contained in the Writ, this doth not make the Writ erroneous; but there an Action upon the Case doth lye against the Sheriff for doing it, or an Assize may be brought against him, that hath the possession delivered to him, for the Surplusage of the Land delivered unto him. 18. *Nov.* 1650. *B. S.*

A Writ of Error ought to mention before whom the Judgement was given for the reversing whereof it is brought. 31. *Jan.* 1650. *B. S.*

A Writ of Error which is brought to reverse an Out-lawry, was wont to be signed by the King. Q. *Who shall sign it now, whether the Parliament or not?* 3. Feb. 2650. B. S. *But now I suppose it shall be signed by the Protector.*

If Judgement be given upon a matter, which doth arise out of the jurisdiction of the Court where the Judement is given, this is an erroneous Judgement. 3. *Feb.* 1650. *B. S. For such a Judgement is given* coram non judice, *and so is voide in* toto.

If a Judgement be entred *quod recuperare debeat*, a Writ of Error cannot be brought to reverse this Judgement; for it is not a perfect Judgement, for the Judgement ought to be *quod recuperet* in the Present Tense. 10. *Maii.* 1651. *B. S.*

A Writ of Error doth lye for the husband to reverse an Out-lawry against his wife. 10. *Maii.* 1650. *B. S. For his own interest is concerned in it.*

If there be two Writs of Error brought to reverse one Judgement, and one of the Writs is good, and the other is erroneous, the Court will take that which is good without any consideration had of the other, if it be to affirm the Judgement. *Trin.* 1651. *B. S. For the Court doth not favor overthrowing of Judgements.*

Entry

Entry.

If one Enter into the house of another without his consent, although the door of the house was open when he Entred into the house, yet this is a forcible Entry. *Mich. 24. Car. B. r. Because it is against the will of the possessor of the house.*

Words alone cannot make an actual *Entry and Ouster*, although they be violent and threatning, but there must be force used by the party to make it so. *Mich. 1650. B. S. For the word Ouster doth imply a violent act to be done, and not words spoken only.*

If he who hath right of Entry into a Free hold in question, do Enter into part of it, this Entry shall be accounted an Entry in all that part of it, which is in the possession of one Tenant, but if there be several Tenants possessed of the Free-hold in question, there must be several Entrys made upon the several Tenants, but if he who hath no right to Enter doth Enter, he shall gain title to no more by his Entry, then that part onely, whereupon he did make his actual Entry. 8 *Nov. 1650. B. S.*

If one do make an Entry into Lands, *&c.* in the possession of another, and he upon whose possession, the Entry is made, do notwithstanding such Entry continue in possession of the Lands, *&c.* with his servants and cattel, such an Entry is to no effect to gain the possession, but if upon the Entry his servants and his cattel be Ousted from the Land, he that is thus Entred upon, must prove that after this he did again make an actual Entry into the Lands, or else he shall not be judged to have regained his possession. 25. *Ap. 1650. B. S. For there must be an actual re-entry to gain the possession against an actual Ouster.*

A special Entry into a house with which Lands are occupied by claiming the whole is a good Entry, as to the whole house and Lands to reduce the title to him that makes this special Entry from him that was in possession of it, and upon whom he entred. *Trin.* 1651. *B. S.*

If one do live in the house with his father, and do continue in the house after the death of his father who dyed in possession his continuing there, shall not be said an Entry to avoid an estate in the house. *Pasc.* 1652. *B. S.*

If one will disclaim a Suit, he that doth disclaime, must enter his disclaimer upon Record. 1652. *B. S. Or else the Court cannot take notice thereof.*

Examination.

A witness that is to be at a tryal to testifie his knowledge there ought not to be examined in any matters concerning the tryal before the tryal, except the Plaintiff and the Defendant do agree thereunto. *Hill.* 1649. *B. S.*

It is usual in the Court of Common Pleas, when a Fem Covert levies a fine, for the Judge to examine her, whether she do it willingly or no, before they take the fine; which they will not take without her free consent. But where a Fem Covert suffers a recovery, she is not examined. But *Rolle* Chief Justice said, *That he doth always examin a Fem Covert that comes before him to suffer a recovery.* 8. Nov. 1650 B. S. *For the mischief may be as great by the not examining of her in the one case as in the other.*

If a Copy of a Will to be made use of at a tryal be to be Examined in the Prerogative Office, it ought to be Examined by the Original Will there, if the Ori-

Original Will be in the Office, and not by the Regi-ster Book there where the Will is entred. 23. *Ap.* 1651. *B. S. For the Will may be misentred there.*

By *Glyn* Chief Justice, The *Custos brevium* ought to examine the Issue to be tryed with the Plaintiffs Attorney before the tryal. *Trin.* 1655. *B.S. That the tryal may not miscary, by reason of some slip in the making up the Issue.*

Engagement.

A Merchant stranger is within the Statute made for the taking the Engagement. 18. *Nov.* 1650. *B. S. That Statute is now taken away.*

Exemplification.

One may Exemplifie a Deed (that is) make a Copy of it under the great Seal in Chancery, and so he may a Bill answer and Intergatories in Chancery, and other proceedings there, and such an Exemplification is Authentick, and may be given in evidence to a Jury upon a tryal. 13. *Maii.* 1651. *B.S.*

A Rule made in the Common Pleas may be Exemplified in that Court. By *Pinsent Preignotary*, and the Court there. 1651. *C. B.* Q. *whether the like may not be in this Court of the Upper Bench.*

Exigent.

An Exigent against two which is returned in these words, *Non Comparuerunt*, and the words *Nec aliquis eorum comparuit*, is erroneous and to be reversed. 21. *Car. B.r. For if any one of the two do appear upon the Exigent, he that appears ought not to be Outlawed, and so the return is uncertain.*

Endictment.

When an Endictment is ſpecial, the Evidence given upon the tryal of this Endictment, muſt prove this ſpecial matter, and maintain the Endictment, but if it be a general Endictment, it is not ſo. 21. *Car. B. r.*

An Endictment muſt be certain that the party Endicted may know how to plead to it, or traverſe, or elſe it is not good, but may be quaſhed. *Hill.* 21. *Car. B. r.*

An Endictment ought to be in Latin, or elſe it is not good, but may be quaſhed, except it be an Endictment taken before Commiſſioners of Sewers, which may be in Engliſh. *Hill.* 21 *Car. B. r. But now ſince the late Statute made for all proceedings in Law to be in Engliſh, all Endictments muſt be in Engliſh.*

The Pariſh in which the fact was done, for which the party is Endicted, ought to be named in the Endictment. 21. *Car. B. r.*

An Endictment doth lye againſt one that ſpeaketh blaſphemous words. 21. *Car B. r. It lay then at the Common Law, but now by a late Act, it lies for ſpeaking of ſome blaſphemous words named in that Act. But Q Whether it now lye at the Common Law for ſpeaking any other blaſphemous words, not mentioned in the Statute.*

An Endictment for a nuſance doth lye againſt the owner or proprietor of a Ship that is ſunk in a Haven or port. 21 *Car. B. r. For thereby the trade of that place where the Haven or that Port is, is hindred, and alſo navigation.*

An Endictment that is framed upon a Statute ought

to

to pursue the words of the Statute, or else it is not good. *Mich. 22. Car. B. r. For the offence being made by the Statute, for which the party is Endicted, it is reason the Statute should be punctually recited.*

One that is convicted upon an erroneous Endictment cannot move after his Conviction to have the Endictment quashed, but must bring his Writ of Error to reverse the Judgement given against him upon the Endictment. *Mich. 22. Car. B. r. For after Judgement it is too late, for an Endictment is quashed for the insufficiency in it, or because no good Judgement can be given upon an erroneous Endictment.*

The Court will not quash an Endictment, that is preferred for the publick good, although it be not a good Endictment, but will put the party Endicted to traverse it, or to plead unto it. *Mich. 22. Car. B. r. For it is by the favour of the Court, that any Endictment is quashed, for if the Court please, they may force the party to traverse or plead.*

An Endictment removed by a Writ of *Certiorari* into this Court, may be sent back again into the County or place, whence it was removed, if there be cause to do it. *Mich. 22. Car. B. r.*

If an Action upon the Case be brought against one for calling another Theif, and the Defendant doth justifie the words, and upon the tryal it be found for the Defendant, an Endictment may be forthwith framed against the Plaintiff to try him for the Felony. *Mich. 22. Car. B. r. For the Felony appears to the Court by the Verdict found for the Defendant.*

An Endictment doth lie against one that cheates another at play with false Dice. *Hill. 22. Car. B. r. Or for any other way of cheating at play or otherwise.*

An

An Endictment doth not lye for a private nusance or other injuries, because the nusance or injury done, is not made *ad communi nocumentum*, but *ad privatum*, and therefore an Action upon the Case doth only lye for the party that is damnified by this nusance or injury. *Hill. 22. Car. B. R.* 11. *Maii.* 1651. *For Endictments are to punish publike offences onely, and done against the publick peace.*

An Endictment lies against one for assaulting and stopping of another in his passing in the High-way. *22. Hill. Car. B. r.*

One that is Endicted for Felony, may have Councel Assigned him to speak for him. *Pasc. 23. Car. B. r. But such Councel are only to speak for him in matter of Law, and not concerning matters of Fact.*

Although a Bill of Endictment be preferred to a grand Jury upon Oath, yet they are not bound to find the Bill, if they find cause to the contrary, and on the other side, although a Bill of Endictment be preferred unto them without Oath made, yet they may find the Bill if they see cause. *Pasc. 23. Car. B. r. But it is not usual to prefer a Bill unto them, before Oath be first made in Court.*

Every Endictment ought to be preferred against the party for some offence committed by him, either against the Common Law, or against some Statute. *Trin. 23. Car. B. r.*

There ought to be fifteen dayes between the preferring of an Endictment and the convicting the party Endicted. *Trin. 23. Car. B. r.* Q. *In what cases, for I conceive it holds not in all.*

An Endictment lies against one that makes a false oath, in an answer to a Bill in Chancery, or in an Affidavit made in a cause depending there, or in any other

other Court of Record. *Trin. 23. Car. B. r. But Q. for what false oath made in an answer it lieth, for it hath been held, that though the whole answer be not in all points true, yet an Endictment lies not, because answers in the Chancery are drawn by Counsel, and not the party himself.*

Where the party Endicted is Out-lawed upon the Endictment, the Court will not quash the Endictment, although it be erroneous, but will force the party Out-lawed, to bring his Writ of Error to reverse the Out-lawry. *Mich. 23. Car. B. r.*

An Endictment may be amended the same Term it is brought into the Court by the Clerk of the Peace, but the next Term after he cannot amend it. *Pasc. 24. Car. B. r.*

If onely a word of form be left out in an Endictment, yet the Endictment is good, but if one word of substance be omitted, the whole Endictment is naught. *Pasc. 24. Car. B. r.*

An Endictment of forcible entry, doth lye for a Tenant for years, who is forcibly put out of his possession. By the Statute of 21. *Jac. Pasc. 24. Car. B. r.*

Upon an Endictment preferred against one in the Kings Bench, there doth issue out an Attatchment against the party Endicted, to force him to appear. *Pasc. 1650. 1. Mail. B. S.*

Execution.

An Execution may issue forth out of this Court, notwithstanding a Writ of Error be brought in the Exchequer Chamber, to reverse the Judgement given here; and upon which the Execution is grounded, if this Court be satisfied that there is no Error in the Judgement; or if the Record be not duly removed

out

out of this Court by the Writ of Error. *Mich.* 22. *Car. B. r.*

One may pray for Execution upon a Judgement given in the Court where it was given, although a Writ of Error be brought to remove the Record, and to reverse the Judgement, if he that brings the Writ of Error, do not assign his errors in due time. *Mich.* 22. *Car. B. r.*

The Court may grant Execution upon a Judgement given, although a Writ of Error be brought, to reverse the Judgement if the Court be satisfied, that the Writ of Error is brought meerly to delay the party from his Execution. *Mich.* 22. *Car. B. r. For the Law doth not countenance delayes, but delights to have speedy Justice done to all parties, though it loves not to surprise any person by over hasty proceedings.*

If Execution be not taken within two years after Judgement is given in a Cause, there must be a *Scire facias* taken out to revive the Judgement, and Execution cannot be taken out, *Mich.* 22. *Car. B. r. But this* Scire facias *may be taken out of course without moving the Court; But if Execution be not taken out in seven years after or longer, then a* Scire facias *cannot be taken out to revive such a Judgement without moving the Court, but upon motion the Court will grant it.*

The Court will not deliver one out of prison that lies there in Execution upon an Affidavit. But the party may have a Writ of *Supersedeas* to *Supersede* the Execution if there be cause. *Trin.* 24. *Car. B. r. Be the matter contained in the Affidavit never so strong for the prisoner because he lies in prison by matter of Record, and must be delivered by an Act of as high a nature which an Affidavit, although it be made before a Judge of the Court, and is filed in Court, is not.*

The

The Court cannot divide an Execution which is entire. *Mich. 24. Car. B. r. For this would be to divide the Judgement upon which it is grounded.*

If the Record be not certified in due time after the Writ of Error is brought to reverse a Judgement, he that hath the Judgement, may take out Execution of Course without moving the Court to have leave to do it. *Mich. 1649. B. S. For it shall be intended that the Writ of Error is meerly brought for delay, because the party doth not prosecute it, and it shall be all one, as if it had not been brought.*

After a Judgement is signed, there may be Execution taken out immediately upon it; and it is not necessary that the Plaintiff should forbear to take out his Execution, untill the Judgement be entred. *Mich. 1649. For it is a perfect Judgement of the Court before it is entred, for the entry of it, is the Act of the Clerk, and not of the Court.*

If the Plaintiff in a Writ of Error to reverse a Judgement be non-suite, yet the Defendant in the a Writ ought not to take out Execution without a *Scire facias* first sued out against the Plaintiff in the Writ of Error. 15. *Nov. 1650. B. S. Q. tamen. For it seems the Plaintiff shall not bring another Writ of Error to reverse that Judgement, but that such non-suite shall be peremptory unto him.*

If a Writ of Error be brought in the Exchequer Chamber, to reverse a Judgement given in this Court, and the Judgement is affirmed there; yet that Court cannot make out Execution upon the Judgement affirmed, but it must be done in this Court where the Judgement was given. 18. *Nov. 1650. B. S. For the affirming of Judgement is not giving of Judgement,*

and

and so it is not their Judgement.

Notwithstanding the late Statute that enacted that a Writ of Error should be no *Supersedeas* to stay Execution, this Court will not grant out Execution upon a Judgement given here if the Record be removed by a Writ of Error into the Exchequer Chamber; Nor will they grant a *Supersedeas*. 10. *Feb.* 1650. *B. S. In* Needler *and* Guests *Case, for it is doubtful whether the Statute do extend to Writs of Error brought in the Exchequer Chamber or not, because that it is not commonly brought.*

If an Execution be returned and filed, the party can never have another Execution upon that Judgement, upon which the Execution was grounded, but if it be not returned and filed, he may have another Execution. 10. *Feb.* 1650. *B. S. For the returning and filing it, makes it to be an Execution executed; but before it was returned and filed, it was but an Execution executory or in* fieri.

If one have a Judgement given for him, and he doth afterwards bring an Action of Debt upon this Judgement, but doth not give any Declaration unto the Defendant; the Plaintiff may at any time within the space of one yeer next after the Judgement given for him, take out Execution upon his Judgement. 1652. *B. S. For the bringing of an Action of Debt, doth not take away his Judgement, and his not prosecuting of his Action of Debt, doth presume he will waive that Action, and resort to his Execution upon the Judgement.*

Elegit.

Upon a *testatum*, an Elegit doth lye into the prin-

cipal

cipality of *Wales*, or into the County Palatine of *Chester*. *Hill.* 22. *Car. B. r.*

Essoigne.

The Essoigne Roll in the Court of the Common Pleas, is a Record of the Court, and doth remain in the Custody of the Clerk of the Essiogns. *Pasc.* 23. *Car. B. r.*

If a Declaration be delivered to the Defendant after the Essoigne day, the Defendant is not bound to plead that Term; but may Emparle unto the next Term. 3. *July.* 1650. *B. S. For it is accounted for a Declaration of that Term, and not of the precedent Term.*

Exception.

The Councel at the Bar ought to take all their Exceptions to the Record at one time, or at least before the Court have delivered any opinion in the cause. *Pasc.* 23. *Car. B. r. For the Court is not bound to hear any afterwards; for this would hinder dispatch of busines.*

A Negative expression may be taken to inure to the same intent, as an Exception doth. *Trin.* 23. *Car. B. r.*

Exceptio in non exceptis firmat regulam.

Estate.

No Estate can be limited to commence after a Fee simple determined, because a Fee simple, is the largest Estate that can be and shall not be supposed to have a possibility, to have an end or determination. *Trin.* 23. *Car. B. r.*

Such an Estate which is not settled at the time of the making

making of it, but both depend as to the being of it upon another estate which is not certain, but may either take effect or not take effect, is a contingent Estate. *Trin. 23. Car. B. r. Because it depends upon an incertainty; and may be or not be, according to the several event of things.*

Enrollment.

An Enrollment of a Deed, is either an Enrollment of it, by the Common Law, or an Enrollment of it according to the Statute of Enrollments. *Trin. 23. Car. B. r.*

If a Deed be Enrolled by the Statute, and the Enrollement of that Deed, is to be pleaded, it must be pleaded precisely, that it was Enrolled according to the Statute. *Trin. 23. Car. B. r. That the plea may be certain.*

The Enrolling of a Deed doth not make the Deed to be a Record, but by the Enrollment it doth only become a Deed Recorded. *Mich. 23. Car. B. r. For there is difference between matter of Record, and a thing Recorded to be kept in memory*

If an Issue be, whether Enrollment or not Enrollment, this issue is tryable by a Jury, and not by the Enrollment: because this issue is mixed with matter of Fact. *Mich. 23. Car. B. r.*

Before the 20 year of Q. *Eliz.* it was not used to Endorse the Enrollments of Deeds upon the back of them, as it is now used to be done. *Mich. 23. Car. B. r.*

An Enrollment of a Deed ought to be made in Parchment, and Recorded in Court. *Pasc. 24. Car. B. r.*

If the Inrollment of a Deed be lost, yet the Enroll-

ment is good evidence if it can be proved to a Jury by circumstances, that there it was an Enrollment. *Pasc. 24. Car. B. r.*

The Enrollement of a Deed is a sufficient proof of the Deed it self upon a tryal. *Mich. 1650. B. S. For every Deed before it is Enrolled, is to be acknowledged to be the Deed of the party.*

If Lands be conveyed in a Deed for mony onely then that Deed must be Enrolled, else the Lands will not pass by the Deed, but if Lands be conveyed in a Deed, in consideration of money paid, and also in consideration of natural love and affection, there it is not necessary to Enroll the Deed, but the Lands will pass, though the Deed be not Enrolled. 5. *Feb.* 1649. *Hil. B. S.*

Escape.

If the Sheriff suffer one taken by him in Execution to Escape, the party, at whose Suite he was taken in Execution, may either have an *Alias Capias* against the party that Escaped, to take him again in Execution, or an Action upon the Case against the Sheriff that suffered him to Escape. *Mich. 23. Car. B. r.*

An Escape in one place, is not an Escape all *England* over, 6. *Nov.* 1650. *B. S.*

Extent.

Lands in the hands of a Trustee may be extended for a Debt due to the King. *Hil. 23. Car. B. r.* Q. *Whether they are extendable for any other Debt.*

Escheator.

The King may by his special Commission, make one or more Deputies Escheators, to find an Office, and this is used to be done after the death of a Noble man or other person of great quality. *Pasc.* 24. *Car. B. r.*

Fine.

A Fine for a licence of Alienation to alien Lands held in *Capite*, is to be paid in Chancery, for there is the pardon for Alienation of such Lands without licence to be sped forth. 21. *Car. B. r.*

If an Officer of this Court do not give his due attendance upon the Court, as his place requires, the Court may set a Fine upon him for his neglect. *Trin.* 22. *Car. B. r.*

This Court may set a Fine upon the Clerk of the peace, who returns an Endictment into this Court, upon a *Certiorari* directed to remove the Endictment into this Court, if the Endictment be not good in matter of form. *Trin.* 22. *Car. B. r. For it shall be intended that it was his negligence, that the Endictment was not well drawn, for it shall not be presumed that he can be ignorant in the form of drawing Endictments.*

The Court cannot set a Fine upon a Sheriff that is out of his Office. *Mich.* 22. *Car. B. r. For then he ceases to be an Officer of the Court.*

If the Conusee of a Fine levyed of Lands, do pay mony unto the Conusor of the Fine at the time of the Fine levyed, and there is no use declared to lead the use of the

the Fine levied of theſe lands; the Law will conſtrue the Fine to be levyed of theſe Lands to the uſe of the Conuſee, to whom the Fine is levyed; but if there be no money paid by the Conuſee, nor any uſe declared, the Fine ſhall enure to uſe of the Conuſor that levyed the Fine. *Paſc.* 23. *Car. B. r. For nothing appears, whereby it can be ſuppoſed that the parties had any intention, the eſtate in the Lands ſhould be altred by the Fine, but that the Fine was levyed in Corroboration onely of the title of the Conuſor.*

If Juſtices of peace do proceed upon an Indictment after a *Certiorari* out of this Court, is delivered unto them, to remove the Endictment into this Court; This Court may ſet a Fine upon them for their contempt to this Court. *Hill.* 23. *Car. B. r. This was done heretofore in the Caſe of Sir* John Sedly, *and Sir* Thomas Stile, *two Juſtices of the peace of the County of* Kent.

If a *Habeas Corpus*, do iſſue out of this Court, and the party to whom it is directed do make an inſufficient return of it, this Court may ſet a Fine upon the party for making this inſufficient return. *Paſc.* 24. *Car. B. r.*

A Fine and recovery cannot deſtroy an eſtate executory, which depends upon contingencies; but it will deſtroy a Remainder. *Q. Paſc.* 24. *Car. B. r.*

If part of a Fine that is ſet upon one that is convicted upon an Endictment, or information for an offence done by him contrary to a Statute, do belong to a ſubject. as it may if the Statute do ſo direct all the fine ſet upon the party, ought not to be eſtreated into the Exchequer. *Paſc.* 24. *Car. B. r. But the Kings part onely ought to be eſtreated.*

A fine *ſur Cognisance de droyt, come ceo, que il ad, de*

lour done, &c. levyed of Land, doth admit the poſſeſſion of the Lands, of which the Fine is levyed to paſs by the Fine; but a Fine *come droyt*, levyed of Lands, doth only paſs the right of the Conuſor in the Lands of which the Fine is levyed. *Mich.* 1649. *B. S.*

A Fine *ſur Cogniſance de droyt come ceo*, &c. is a Feſſment upon Record of the Lands compriſed in the Fine, and doth imply a Livery and Seiſin to be made of thoſe Lands. *Hill.* 1649. 29. *Jan. B. S.*

A Fine of twenty nobles, was ſet upon one, for bringing an Attaint againſt a Jury, after the Jury had been formerly acquitted. *Hill.* 1649 4. *Feb. B. S.*

A Fine ſet upon one which is voideable, that is, may be avoided, is not void abſolutely, but continues to be a good Fine, untill it be avoided by the Plea of the party that is Fined. *Paſc.* 1650 4. *Feb. B. S.*

One may declare the uſe of a Fine by Paroll; and if there be ſuch a Declaration by Paroll, made to lead the uſe of a Fine, and it be defective, to declare the intent of the parties, it may be afterwards ſupplyed and made good by ſubſequent Paroll. 8. *Nov.* 1650. *B. S.*

Filing of Proceſs or other thing.

A *Capias* that is duly ſued forth, may be filed afterwards, and it is not neceſſary to File it at the time when it is taken forth. 21. *Car. B. r. For the Filing of it doth contribute nothing to the eſſence of the Writ.*

A Declaration may be Filed in the Office after a Writ

Writ of Error is brought to reverse the Judgement given in the cause wherein that Decleration was given; and so is it of a Warrant of Atturney. *Pasc. 24. Car. B. r. For the Defendant is at no prejudice by the filing of them, and he did take notice of them, as appears by his pleading and going to issue with the Plaintiff.*

Affidavits which are not read in Court, may not be filed there, untill the secondary hath made his report in the cause touching which, such Affidavits were made, but if they be read in Court, they may be presently filed. *Trin. 24. Car. B. r. For the Court takes no notice of them, untill they be read in Court.*

An original Writ may be Filed after Judgement given in the cause, for which it was sued forth; if it were sued forth before the Judgement given. *Trin. 1650. 26. Junii. B S.*

The Court will not compell the Plaintiff to file a *venire facias* after a Verdict, if the *venire* will make an Error, for if there be no *venire*, that defect is helped by the Statute of *Jeofailes*, but if there be a *venire*, and that *venire* is erroneous; this is not helped by the Statute. *Trin. 1651. B. S.*

False Latine and Form.

The Court doth use to amend False Latin and Form in Bills presented unto them by the grand Enquests every Term by their licence and consent; but the Court cannot amend matter of substance in them. *Mich. 22. Car. B. r. For that were to make new Bills.*

Forma Pauperis.

If one that is admitted to sue in *Forma pauperis* will not proceed according to the Rules of the Court, but useth delayes to vex his adversary, the Court will Dispauper him. *Mich. 22. Car. B.r. For the Law doth not favor the poor to do injury to others, but to help them to recover their right.*

If one that doth doth sue in *forma pauperis*, be non-suite at the tryal, he must pay costs to the Defendant, or else be whipped *Pase. 1652. B.S. For the Law will judge he had no cause of Action, and therefore he must make satisfaction to the Defendant for injustly vexing of him, and if he cannot do it by his purse, he shall do it in his person.*

If it be proved unto the Court, that one who sues in *forma pauperis* is a vexatious person, and hath many frivolous Suites depending the Court will Dispauper him. 1654. *B.S. For this will be a means to make him less contentious.*

Rolle Chief Justice said, *That he did not use to admit any one generally to sue in* Forma pauperis; *but onely to sue so in one Cause, by vertue of that admittance.* 1654. *B.S.*

Forfeiture.

If one take a wife, that is Seised of Gavel-kind Lands, and she dyeth without issue by her husband; her husband shall be Tenant by the curtesie of half of the Lands so long as he shall live unmarried, but if he marry again he shall Forfeit his estate in the Lands. *Mich 22. Car. B.r. This is by the custome of* Kent, *but by the same custome, if he had issue by his wife, then*

then he ſhall be Tenant by the curteſie of all the Lands his wife was ſeiſed of, and although he do marry again, he ſhall not Forfeite his eſtate. Mich. 22. Car. Q. *Whether in the former Caſe, he ſhall forfeit his Tenancy by the curteſie, if he do live incontinently.*

If a Leaſe be ſo made, that it is to be Forfeited, if the Rent reſerved in the Leaſe be not paid, as the Leaſe doth provide; although the Rent be not paid accordingly, yet there is no Forfeiture to be taken, if there was not an actual and Legal demand of the Rent made by the Leſſor. *Mich. 23. Car. B. r. For the Law doth not favor defeating of eſtates.*

If a Copy-holder do deny to pay unto the Lord the fine which is aſcertained due unto him by the Copy-holder, or do refuſe to appear at his Lords Court, and to do his Suite there; this is a Forfeiture of his Copy-hold eſtate. *Trin. 24. Car. B. r. For he holds his Copy-hold of the Lord upon theſe conditions.*

If a Copy-holder do let his Copy-hold unto another for years, and the Leſſee do ſell the Timber growing upon the Copy-hold, yet this is not a Forfeiture of the Copy-hold eſtate. 6. *Nov.* 1650. *B. S.*

Franchiſe.

Nor Franchiſe ſhall be allowed in any caſe where the Franchiſe doth fail to adminiſter juſtice within the Franchiſe; but if there be ſuch a failer, this Court by their Authority may intermeddle (notwithſtanding the priviledges of the Franchiſe) to compell them to do Juſtice. *Mich. 22. Car. B. r. For priviledges are not granted to protect men in neglecting to do right, or to do wrong.*

Fees.

In such Cases where the Sheriff is to have Fees there he is not bound to execute his Office in returning of Writs, &c. untill the Fees that are due unto him, be tendred unto him. 22. *Car. B. r.*

The Statute of 23. *H.* 5. which doth give Fees to Sheriffs, doth onely extend to their executing of Writs of Execution. 22. *Car. B. r.*

There are no Fees due to the Sheriff by the Common Law by the Subject for executing his Office; but the King ought to pay him his Salary. *Mich.* 22. *Car. B. r. For as the people do owe Allegiance to their King, so the King doth owe Justice and protection unto his people.*

An Action of Debt doth lye for a Councellor or an Attorney for his Fees against him that retained him in this cause. *Mich.* 22. *Car. B. r.* Q. *Whether it lye for a Counsellor?*

If a Client, when his business in Court is dispatched, doth refuse to pay unto the Officer in Court, the Fees which are due unto him for doing his business; the Court will upon motion grant an Attatchment to the Officer against the Client, to have him committed, untill he pay the Fees due. By *Rolle* Chief Justice 1650.

Felony.

Where one is doing of an unlawful act, and the death of any person ensueth upon the doing of that act, though the death of the party was not intended by him that did the act, yet this is Felony. *Pasc.* 23. *Car. B. r.*

If one be committed to the Goal for one Felony, the

the Justices of the Goal delivery, may enquire and try him for another Felony for which he was not committed. By *Bacon* Justice. *Trin.* 23. *Car. B. r.*

It is Felony to personate a Baile. By *Bacon* Justice. *Mich.* 23. *Car. B. r.* Q. *whether the procuring of one to personate a Baile be Felony.*

The receiving onely of stolen goods, is not Felony; but the receiving of them, and comforting the Felon is Felony. *Pasc.* 24. *Car. B. r. For he may receive them, and not know them to be stolen, but the comforting the Felon, doth prove that he consented to the Felony.*

If one be set upon in the High-way or other place to be robbed, and he do cast away his goods with an intent to save them from the robber; and the robber doth take them up, and carry them away, this is a robbery and Felony committed to the person of the party robbed, although he took nothing from his person. *Mich.* 1649. *B. S. For the party is robbed of his goods, and the thief knew them to be the parties goods, and came with an intent to take them from him, had he not cast them away.*

One ought not to be arrested upon suspicion of Felony, except that there be good cause shewed for the ground of this suspicion. 1649. *B. S. For every foolish fancy or conceit, is no ground of a suspicion sufficient to arrest one for so high a crime.*

It is Felony to take a Bill from off the File, after a Verdict in the cause for which the Bill was sued forth. *Mich.* 1649. *B S. For this is embezeling of a Record.*

The robbery of a servant of his masters money in his custody, if it be in the presence of his master, is robbing of the master. *Mich.* 1649. *B. r.*

A robbery shall be said to be done in that Hundred where the party robbed is first set upon, although his goods be taken from him, in another Hundred. *Mich.* 1649. *B. S. For there the robbery was begun, and the peace first broken.*

A Hundred shall not be charged for a robbery committed within it upon the Statute of *Winchester* in *Crepulsculo* or twilight, that is, when it is neither perfect day nor perfect night; but if it be committed by day light, although it be before the rising of the Sun, or after the setting of it, the Hundred shall be charged. 31. *Oct.* 1650. *B. S.*

A Hundred shall not be charged for a robbery committed within it in the night, because hue and cry, cannot be made in the night, for that is a time for rest. 1650. *B. S.*

If a robbery be begun in the day light, but is not ended till dark night, yet the Hundred where it was done is chargeable for it by the Statute of *Winchester.* 1650. *B. S.*

Fee simple.

A Fesſment made of Lands to one and his Heirs Males is a Fee simple. *Mich.* 23. *Car. B. S. For it is not an estate comprised within the Statute of* West. 2. De donis conditionalibus.

False Imprisonment.

An Action of False Imprisonment, doth lye against a Baily, by the party that is Arrested by him, after the Writ is returned, by Warrant whereof he was Arrested. *Hill.* 23. *Car. B. r. For this is all one, as*

if,

if he were Arrested without a Writ for by the return of the Writ, the Sheriffs and Bailiffs power are at an end, as to that Writ.

If a *procedendo*, be unduely obtained, and the party against whom it is had, be thereupon taken and imprisoned, an Action of False Imprisonment doth lye by the party Imprisoned against him, at whose Suite, he is Imprisoned. *Mich. 24. Car. B. r.*

Feoffment.

A Feoffment made of Lands unto a Fem Covert is a good Feoffment in Law, untill the husband do disagree to it. *Hill. 23. Car B. r.* Q. *If the husband do not know of the Feoffment made, and after the Feoffment doth dye; What the Feoffment shall operate?*

Foundation.

None hath power to Found a free Chappel but the King. *Hill. 23. Car. B. r. For it is as much as to create a new Tenure.*

The Foundation of a thing may alter the Law, as touching that thing. *Hill. 23. Car. B. r.*

Fiction of Law.

The Law ought not to be satisfied with Fictions, where it may be really satisfied. *Pasc. 24. Car. B. r. Yet in some Cases Fictions of Law are necessary and to be allowed.*

Gavel-

Gavel-kinde.

IF one take to Wife a Woman Seised of Gavel-kind Lands, and the Wife dye without having had any issue of her body by her husband, yet the husband shall be Tenant by the courtesie of half of the Lands, during the time he continues unmaryed. But if he marry he shall forfeit his Tenancy by the courtesie. But if he had issue by the Wife, if the Wife dye he shall be Tenant by the courtesie of the whole Land, and although he do marry, he shall not forfeit his Tenancy by the curtesie. *Mich. 22. Car. B.r. This is by the custome of Kent.*

Guardian.

A Gardian of an Infant may acknowledge satisfaction upon Record for a Debt, which he hath recovered at Law for the Infant. *Trin. 23. Car. B.r. But it must be a Guardian, that is Assigned by the Court to sue for the Infant.*

The Court will Assigne a Gardian to an Infant to sue for him, if the Infant do come into Court, and desire it of the Court, and name the party he desires to have for his Guardian, and produce him in Court. *Trin. 24. Car. B. r.*

Good Behaviour.

If one do affront any Court of Justice, this is a good cause to bind the party to his Good Behaviour. *Pasc. 24. Car. B.r. For the affronting of justice, is a publike misdemeanor, and not a private, although it be*

be done, but to the person of one man, as to the Judge of a Court, a Justice of peace, &c.

He that doth upon Articles sworne in Court, desire the party against whom the Articles are sworne, may be bound thereupon to the Good behaviour, must expresse some speciall matter in those Articles, for which he ought to be bound to the good behaviour. For if the Articles be only generall, the good behaviour is not to be granted upon them. *Mich.* 22, *Car. B. r. For a generall accusation is no accusation for the incertainty of it.*

Perjury is not an offence, for which the party perjured may be bound to the Good behaviour. *Mich.* 22. *Car. B. r. But the party may be endicted for it, and fined, if he be thereupon convicted.*

One was bound to his Good behaviour, for affrighting people in the night in their houses, by shooting off of Muskets, and for the assaulting of one going in the high way. *Mich* 22 *Car. B. r.*

A woman that is a common scold may be bound unto the Good behaviour. *Mich.* 22. *Car. B. r. For she is a common disturber of the publique peace.*

The Good behaviour was granted against one upon an Article sworne against him, that he had maliciously pulled down a piece of anothers house. *Hill.* 22. *Car. B. r.*

A Justice of Peace ought not to binde any person to the Good behaviour, upon a generall accusation made against the party. *Pasc.* 23. *Car. B. r.*

One was bound to his Good behaviour, for stopping of a Constable from making pursuit after a felon. *Trin.* 23. *Car. B. r. For this is a publike offence against the Common-wealth.*

The Good behaviour is not to be granted againſt one, for ſpeaking of words only againſt one perſon: but it may be granted againſt one, for ſpeaking of words againſt divers perſons at ſeverall times. *Hill. 23. Car. B.r. For that is a generall misbehaviour.*

The Good behaviour was granted againſt one, upon an Article ſworne and read againſt him, that he ſaid that he would burn down another mans houſe. *Hill. 1649. B.S.*

Heire.

THe word Heir is *nomen collectivum*, and extends unto all Heirs. *Trin. 23. Car. B. r.*

The Heir is favoured at the Common Law, for at the Common Law the Anceſtor could not convey away his Lands, from his Heir at Law, upon his death bed, without the conſent of the Heir. *Hill. 23. Car. B.r. The Law is the preſerver of Inheritances.*

Heriott.

A Heriott is the fruit of a Rent-ſervice. *Hill. 21. Car. B. R. This is to be meant of Heriott ſervice, and not of Heriott Cuſtome.*

Habeas Corpus.

If a Priſoner appear in Court, upon a retorne of a *Habeas Corpus* to remove him hither; and there doth appear by the retorn, that there was good cauſe to commit the priſoner to priſon, and to detain him there, the Court will remand or ſend him back to the place where he was firſt committed; but if upon the retorne, it doth appear that there was no lawfull cauſe

to

to commit him, then the Court will discharge the prisoner: but if it be doubtfull to the Court, whether he was lawfully committed or not, then the Court will bail the prisoner. *Hil.*21.*Car.B.r. Trin.* 23.*Car. B.r.*

A *Habeas Corpus ad respondendum*, is when any one is imprisoned, at the suit of another upon a legall process, in the Fleet or any other prison, except the Kings Bench prison, and a third person would sue that prisoner in this Court, and cannot, because he is not in custody of the Mareschall of this Court, there he may have a *Habeas Corpus*, to remove the prisoner out of the prison where he is, into this Court, to answer unto his Action here. 21.*Car. B.r.*

A *Habeas Corpus cum Causa*, doth remove the body of the party for whom it is granted, and all the Causes which are then depending against him. 21. *Car.B.r.*

A *Habeas Corpus*, is either *ad subjiciendum*, granted on the Crown side: Or, *ad respondendum*, granted on the Pleas side.

The Court will not grant a *Habeas Corpus*, retornable *immediate*; but in some Cases they will give but a short time to retorne it. *Trin.*23. *Car. B.r. For though the Law doth favour liberty, yet it allowes convenient time for doing of things.*

After the retorn of a *Habeas Corpus* is read and filed in Court, it cannot be amended. *Trin.*23. *Car. B.r. For then it is a Record of the Court.*

None ought to take out a *Habeas Corpus* for a Prisoner without his consent. *Trin.*23. *Car.B.r. This holds not in all Cases; for one may take out an* Habeas Corpus *without his consent, to charge him with an Action.*

A

A *Habeas Corpus*, to remove one that was committed for debt, from one prison to another, may be granted, retornable *immediate*, or rather *in dilate*: for this is only a *Habeas Corpus ad recipiendum*, in the nature of it.

A *Habeas Corpus* was granted out of this Court, directed to the Serjeant at Armes of the House of Commons in Parliament, for a prisoner committed unto him by a Committee of the House of Commons. *Mich.23.Car.B.r.*

A Iudge of this Court will not grant a *Habeas Corpus* in the vacation, for a prisoner to follow his suit; but the Court may grant a speciall *Habeas Corpus* for a prisoner to be at his tryall in the vacation time. *Pasc.* 1650. 24. *Maii B.S.*

The Court will grant a *Habeas Corpus* to one, to have a prisoner out of prison to be a witness for him at a tryall, but at the charge of him that desires the *Habeas Corpus*; and at his perill, to take care that the prisoner do not make an escape. 29. *Junii* 1640. *Trin. B.S.*

A *Habeas Corpus ad subjiciendum*, is granted on the Capital or Criminal side, but a *Habeas Corpus ad recipiendum & faciendum*, is granted on the Pleas side. 1650. *B.S. For so the Court of the upper Bench is divided in the practise of it*, viz. *into Criminal Causes, which are between the Protector and the party, and the Civil Causes, which are ated on the Pleas side, and are between one subject and another.*

Habere facias possessionem.

One may have a new Writ of *Habere facias possessionem*, if a former Writ of *Habere facias possessionem* in the same Cause be not well executed

or returned. *Mich. 22. Car. B. r. For that is all out as if such Writ had never been taken out.*

Homage.

When livery is granted to the Heir at full age, of the Lands for which he was in ward to the King during his nonage, and which were by reason thereof in the Kings hand: his homage which he should do to the King (by reason of his tenure) at the time when the livery is sued forth, is respited for a certain summe of money, to be paid yearly to the King by the heir, untill the heir shall do his homage, and these monies are called respite of Homage: because by reason of such monies the Homage is respited or put off from year to year. 1655. *B. S.*

Hundred.

If a robbery be begun in the Hundred of *Dale*, and ended in the Hundred of *Sale*; the Hundred of *Dale* is chargeable for this robbery, upon the Statute of *Winchester*. 1655. *B. S.* Q. *For it seems both should be chargeable.*

Jury.

THe Court was moved, that a Jury of Merchants might be returned, to try an issue between two Merchants, touching Merchants affairs, and it was granted. *Hill. 21. Car. B. r. Because it was conceived, they might have better knowledg of the matters in difference which was to be tryed, then others could who were not of that profession.*

A Jury may finde a thing which is not given unto

them in evidence, if they do know it of their own knowledg. *Mich.* 22. *Car. B.R. For they may inform themselves of the truth of the fact they are to try, by all possible and lawfull means they can, and are not solely tyed to the evidence given at the barr.*

A Jury may take notice of a matter of Record, but they cannot try it. *Mich.* 22. *Car. B.R. For a Record must be tryed by it self.*

In every Case where there is to be a speciall Jury returned, there ought to be a speciall Writ of *Venire facias* to summon that Jury. *Mich.* 22. *Car. B.R.*

If more then twelve men be returned upon a Jury, and do appear, the first twelve that stand in the panell, are to be sworn and to try the Cause. *Pasc.* 23. *Car.* B.S. *If none of them be challenged: but if some of them be challenged, and the challenge is also made good against them, then so many more of those that remained above the number of twelve, shall be taken in, in order as they are ranked in the panell, to fill up the number that wanteth, to make it a full Jury.*

If a Juror do inhabit in a house that is in the Parish of *Dale*, and do occupy Lands that do lye in the Parish of *Sale* next adjoyning, and he is returned upon a Jury as of the Parish of *Sale*, this is well enough although he do not dwell in *Sale*. Pasc. 23. Car. B.R. *For he shall be said to be as well of the Parish where the Lands lye which he occupieth, as of the Parish where he inhabits: for he is a Parishioner in* Sale, *though an inhabitant in* Dale.

If more then twelve men do appear at a tryall, after twelve of them are sworn, the rest that are unsworn, must not continue upon the stand with those that are sworn, but must depart. *Pasc.* 23. *Car. B.R.*

The

The Court may give the Jury leave to drink at the Barr, after the evidence is given to them, and before the verdict, if the Plaintiff and the Defendant will consent unto it. *Pasc. 23. Car. B. r. But they may not drink out of the Court. A Jury had leave to drink at the barr; after a long evidence given, in a very hot day in Easter Term above said.*

In Cases, where it is conceived an indifferent Jury will not be returned between the parties by the Sheriff of the County where the venue lyes, the Court upon motion, will order the Sheriff to attend the Secondary of the Office with his book of the Freeholders of the County where he is Sheriff, that he may see an indifferent Jury returned. *Trin. 23. Car. B. r.*

A Jury cannot try a Consideration to ground an Assumpsit, if the Consideration was given or acted out of that County where the action is tryed. *Trin. 23. Car. B. r.*

Upon a motion and an Affidavit made in Court, that the Cause to be tryed at the barr, is a Cause of very great consequence, the Court will make a Rule for the Sheriff to returne 48. Jurors upon the Jury. *Trin. 23. Car. B. r.*

A Tenant that is within the distress of a Lord of a Mannor or Leete, ought not to serve upon a Jury, in a Cause that concerns the Lord. *Mich. 23. Car. B. r. For it shall be presumed, he may not be indifferent, in regard of fearing to displease his Lord.*

After a Juror is sworne, he may not go from the Barr, untill the evidence be given, and the directions of the Court, for any cause whatsoever, without leave of the Court; and although he have leave, he must have a keeper with him. *Pasc. 24. Car. B. r.*

If a Juror be challenged, and the Challenge entred by the Secondary, that Juror cannot be after that sworne as a Jury man, to try that Cause wherein he was challenged, *viz.* at that tryall. 24. *Car. Pasc. B. r.* Q. *Whether before the Challenge entred, he may be sworn.*

Where a tryall is to be, for a thing that concerns the Under-Sheriff, there the High-Sheriff shall retorne the Jury. *Trin.* 24. *Car. B. r. For here shal be no favour supposed; but if the tryall concerne the High-Sheriff, the Under-Sheriff shall not retorne the Jury, for there may be presumed to be favour: for the servant depends upon the master, and not the master upon the servant.*

The Jury ought not to have any writting with them when they go from the Barr, which hath not been proved, although such a writting hath been given in evidence unto them. *Mich.* 24 *Car. B. r.*

The Jury may finde matter of Record, if they do know it of their own knowledge. *Pasc.* 1650. *B. S.* 10. *Maii. For a mans own knowledge is more certain than any evidence can be given.*

There are three grand-Juries retorned every Term to serve in this Court, every Jury consisting of 16, 17, 18, 19, or 20 Jurors, or more.

Though a man be very aged, yet if he be of an able body, and not infirm, he is not to be excused from serving upon the grand Jury: One *Butler*, a man of 72 years of age, was denied by *Rolls* Chief Justice, to be excused to serve, because he was of an able body. *Hil.* 1651. *B. S.*

One that hath no Freehold in the County, or is Constable, or a Surveyor of the high-way, or is a sequestred person, are not thereby to be excused from

from serving upon the grand Jury. *Pasc.* 1651. *B. S. By* Rolle *Chief Justice. But Q. of a sequestred person.*

The Jurors that appear at a tryall, shall not have their charges allowed them, if the Cause be not tryed for want of Jurors. *Pasc.* 1652. *B. S. For their appearance is to no benefit of any body.*

When a Juror is withdrawn, he is strook out of the panell by the Secondary.

Upon a generall issue, the Jury may finde a Record, but not upon a nul tyell Record. *Pleaded* 1651.

If but eleven of the Jury be sworne, if the twelfth man do stand by, and hear all the evidence that was given to his fellowes, he may be sworne afterwards, and pass upon the tryall. *By* Rolle *Chief Justice.* 1654. Pasc. B.S. *For the Jurors are sworne to try the issue, upon the evidence they shall hear*; *so that it seems, the time of being sworne is not materiall, whether before or after the evidence.* Q.

The Jury may take Depositions taken in Chancery, and exemplified there, given in evidence to them, from the Barr with them: but if they be not exemplified, they may only look upon them in Court, but not take them with them out of the Court. 1654. B. S. *For to see them, is no more then to hear them read.*

Issue.

Every Issue is to be joyned in such a Court that hath power to try it, otherwise the Issue is not well joyned. 21. *Car. B. r. For if the Cause cannot be tryed the issue is fruitless.*

If an Action of Trespass be brought against two,

for entring into the Plaintiffs Land, and one of them pleads that the Land is his freehold, and the other that he entred into the Land by the commandment of him that pleads it is his freehold, here is to be but one Issue joyned. 21. *Car. B. r. For but one of the Defendants claimes an interest in the Land, and the other justifies but as a servant unto him, and if the tryal pass for him that claimes the interest, there is no colour of Action to be maintained against the other.*

If there be a Demurrer to an evidence, and the party whose evidence is demurred unto do plead to the demurrer, and joyn Issue with the Defendant upon it, this Issue must not be joyned upon a matter in fact in the evidence, but that must be agreed, or else the Issue is not well joyned; for the Court are not to try matter of fact, for that would be for them to give a verdict. *Mich* 22. *Car. B. r. Whereas the Court are only to declare the Law, whether, admitting that all the matter given in evidence by the Plaintiff be true, it doth prove the Issue in question or not.*

By the Rules of the Court, if the Plaintiff will not try his Issue after it is joyned, in such time as he ought by the course of the Court to do, the Defendant may try it by Proviso if he will. *Hil.* 22. *Car. B. r. That he may free himself (if he can) of the danger and trouble he may be subject to, by the depending of the Action brought against him, and to recover his dammages for his unjust vexation.*

A judgment may be entred as to one part of an Issue, and a *nolle prosequi* to another part of the same Issue. *Mich.* 23. *Car. B. r. This is only where the Issue may be divided.*

Where there is a demurrer to part of an Issue, and the other part of it remains to be tryed by a Jury,

the Tryal of it may be either before or after the arguing of the Demurrer at the Election of the Plaintiff. *Pasc. 23. Car. B. r. For the Demurrer and the Issue have no dependancy one upon the other.*

Every issue ought to be joyned upon the most material thing in the Cause depending, that all the matter in question between the parties, may be tried. *Hil. 23. Car. B. r. For else the trial will prove to little purpose.*

If an Issue be once joyned between the parties, this Issue cannot afterwards be waved, except both parties do consent unto it, although the Issue be but in paper, and not engrossed in parchment. *Trin. 24. Car. B. r. Therefore it is good to be well advised before the Issue be joyned.*

The place ought not to be made part of the Issue in a transitory action. *Trin. 24. Car. B. r. For the place is not material, as it is in a real and mixt action.*

An immaterial Issue joyned, which will not bring the matter in question to be tried is not helped after Verdict, by the Statute of *Jeofailes*, but there must be a Repleader. *26. Jan. Hil. 1649. Pasc. 1650. 4. Maij. B. S. For this is matter of substance; For if there was no Issue, there could be no Verdict, and so it is, as if nothing were done in the cause.*

If there be two Issues joyned in one cause, and one of them is a good Issue, and well joyned, and the other is not a good Issue, but ill joyned, and upon trial of the Cause, entire Dammages are given upon both the Issues, this is erroneous. *31. Jan. 1649. Hil. B. S. For here are Dammages given, for matter, which is not rightly tried for want of joyning a good Issue to bring it in question.*

An affirmative on the one part, and a negative on the other part, although it be but an implied negative, do make a good Issue. 15. *Maij. Pasc.* 1650. *B. S. For an implied negative, doth deny what is affirmed, although not so plainly, as an expresse negative.*

When a Plea is pleaded to the Plaintiffs Declaration, and the Plaintiffs Attorneys hand is set to this Plea, then the Issue is joyned betwixt the Plaintiff, and the Defendant, and not before. 6. *Feb.* 1650. *B. S. For then both partits are agreed of the matter in question betwixt them.*

Judgement.

Upon a Recovery in any Action, where the Plaintiff doth declare for a thing done, *vi & armis*; the Judgement ought to be entred with a *Capiatur* for a Fine for the King: But in an Action upon the Case, where the Plaintiff is not to declare with a *vi & armis*, there the Judgement against the Defendant ought to be, that he be *in misericordia*. 21. *Car. B. r. The Capiatur which is imprisonment of the Party, and the Fine for the King, are for the breach of the Publick Peace, which every Action*, vi & armis, *doth imply: But Trespasses on the Case do not so, and therefore there the Party is only to be amerced, and not to be imprisoned or fined.*

Where there are several Judgements against the Defendant, one of those Judgements may be reversed as erroneous, and yet the other Judgments stand in force. 21. *Car. B. r. This is meant where there are several Judgements upon one Record.*

All Judgements, given in any Court of Record, ought to be entred in Latine: And if they be in

English

English they are reversable by a Writ of Errour. 21. *Car. B.r.* *This is now altered by the late Statute, that enacts all proceedings in Law to be in English.*

No Councel ought, by the Rules of the Court, to move any thing in arrest of Judgement, except the Roll, wherein the Judgement is entred, or the *Postea* be in Court. 22. *Car. B.r.* *That the Court may be satisfied, that the matter moved, in arrest of Judgement, is truly recited from the Record.*

There is difference between a customary Judgment, and a Judgement given, according to the Common Law. *Trin.* 22. *Car. B.r.*

It is sufficient matter for the Defendant to move, in Arrest of Judgement, to prove that he had not sufficient notice, given unto him of the trial, before the trial, according to the Course of the Court. 22. *Car. B.r. Hill.*

If a Judgement be given, which is erroneous, and the Plaintiff do take out a *Scire facias*, upon that Judgement, and have a Judgement upon that *Scire facias*: The Judgement upon that *Scire facias* is erroneous also. *Mich.* 22. *Car. B.r.* *For if the foundation be naught, that which is built upon it, must needs fall; And here the first Judgement is the ground of the second.*

A Judgement which is given, contrary to the Verdict, which was found in the Cause, is a void Judgement. *Mich.* 22. *Car. B.r.* *For the Judgment is to be warranted by the Verdict, and is but the affirmance of the Verdict, and therefore it must not contradict the Verdict.*

The Court will not reverse a Judgement, given upon a *Nihil dicit*, and by the Rules of the Court, but

but by the Consent of the Plaintiff and the Defendant, the Court will grant a Repleader in the Case. *Mich.* 22. *Car. B. r.*

If a Verdict be given after the term, no Judgement can be given upon that Verdict, untill the next Term following. *Mich.* 22. *Car. B. r.* 23. *Car. B. r. For such proceedings in the Law, ought not to be in the Vacation time, but in Term time; For the Judgement is the Act of the Court, and the Court sits not, but in Term.*

If a Judgement be obtained, but the Plaintiff doth take out no Execution upon this Judgement, in two whole years next after the Judgement given: The Plaintiff cannot then take out Execution, untill he have revived this Judgement by a *Scire facias*, which Writ he may have without motion, by the course of practice of the Court; but if there be an old Judgement, upon which no Execution hath been taken out, such a Judgement cannot be revived by a *Scire facias*, without a motion, and leave of the Court. *Mich.* 22. *Car. B. r.* *But the Court doth not use to deny a* Scire facias *in such a case.*

If the Defendants Attorney do enter a Plea for his Clyent in the Office, the Plaintiffs Attorney cannot enter a Judgement against the Defendant upon a *Nihil dicit*, or for want of a Plea, although the Plea be not given unto him by the Defendants Attorney. *Mich.* 22. *Car. B. r.* and *Pasc.* 24. *Car. B. r. For the Office is the place where the Attorneyes on both sides are to inform themselves of the proceedings in their Clyents Causes; and the delivery of Declarations and Pleas, &c. by one Attorney to another in their Clyents Causes, is rather matter of courtesie and civility, than of any necessity or duty.*

Four

Four days after the Plaintiffs Attorney doth bring the *Postea* into the Court, he may enter Judgement for his Client by the course of the Court. *Mich.* 22. *Car. B. r. Except the Defendant doe then, or before move something to the Court to arrest or stay the Judgement.*

Where a Judgement is arrested only for mispleading, there the Court will grant a Repleader. *Mich.* 22. *Car. B. r.*

A Judgement was reversed in this Court, for tautology used in it. *Mich.* 22. *Car. B. r. That is, for repeating the same thing over and over. For the Law will not suffer Barbarismes in the proceedings thereof.*

If a Judgement be unduly obtained, and sufficient proof be made thereof unto the Court, the Court will vacate the Judgement, and restore the party damnified by it, to be in the same Condition that he was in before the Judgement. *Mich.* 22. *Car. B. r. without putting him to a Writ of Error.* Pasc. 22. Car. B. r. *For the Court will not be made a stale to do any person injury.*

If one will take advantage of a Defeasance of a Judgement, to avoid the Judgement, whereupon it was made, he must plead this Defeasance in Court, otherwise the Court cannot take notice of it. *Mich.* 22. *Car. B. r. For the Defeasance is a private thing between the Parties, and no part of the Record.*

A Judgement in an Action of Detinue, is given conditionally, that is to say, that the Plaintiff recover the thing it self, which is detained, if it may be had, but if it may not be had, that then he recover Dammages for the thing. *Hil.* 22. *Car. B. r.* viz.

Dam-

Dammages to the full value of the thing it self, and also for the detaining of it.

Whereſoever the Defendant is upon the Judgement to be fined to the King, there the Judgement is to be with a *Capiatur*, but where he is not to be fined, there the Judgement ſhall be, that the Defendant be *in Miſericordia*. *Hill.* 22. *Car. B. r.*

Though a Judgement be legally ſigned, yet if it be never entred it is no Judgement. *Hill.* 22. *Car. B. r. For every Judgement muſt be matter of Record, but before the Entry it is not ſo.*

By the courſe of the Common Pleas, a Surety that is bound with one in an Obligation, may plead for the principle to an Action brought upon this Obligation, and acknowledge a Judgement againſt him; But this ſeems very hard, and this Court will not admit of ſuch practice. *Paſc.* 23. *Car. B. r. It is ſaid, that now the Common Pleas will not ſuffer it, but do agree in their practice in this point with this Court.*

The Defendant hath all the Term, wherein a Judgement was given againſt him to ſpeak any thing to arreſt it; For the Judgement is all the Term, wherein it was given in the breaſt of the Judges, either to make it a Judgment, or not, although it be entred upon Record. *Paſc.* 23. *Car.* and 24. *Car. B. r. Yet the Plaintiff may take out Execution, if nothing be ſpoken, to arreſt the Judgment in four dayes after the Poſtea is brought into Court any time after that in the ſame Term.*

A Judgement may be entred, as to part of an Iſſue, and a *Nolle proſequi* may be entred, as to another part of it, *Paſc.* 23. *Car. B. r.*

When

When at a Tryal the Defendant is called (which is used to be done three times distinctly by the Crier of the Court) and he do not appear, Judgement shall be taken against him by default. *Pasc.* 23. *Car. B. r. That is, for not appearing to make his Defence; For the Law will presume he is guilty, and hath no Defence to make.*

If Judgement be given for more then the Plaintiff doth demand in his Declaration, this Judgement is erroneous. *Pasc.* 23. *Car. B. r. For to give one more then is his due, is as equal injustice, as to deny any one that which is his due. And it shall be presumed, that the Plaintiff best knows what is his due, and will demand it to the full.*

If an Action of the Case be brought against one for speaking of divers, distinct, scandalous words of another, and the Dammages are laid severally for them, *viz.* so much Dammages for speaking of such of the words, and so much Damages for the speaking of such other of the words, there Judgement may be given for speaking of such of the words, as the Plaintiff was damnified by, and not for the other words, by which he was not damnified; But if the Dammages be laid entire, for speaking of all the words, and some of the words be not actionable, so that Dammages cannot be given upon all the words, there shall be no Judgement or Dammages given for any of them. For the Court cannot proportion the Dammages.

Judgements given in inferiour Courts, must be entred, *Idea consideratum est per curiam*, in words at length, and not *Idea consideratum vii*, &c. as the use is in the Courts at *Westminster*, for if they do not, they are erroneous there, though it be not so in the

the Coutts at *Westminster*. Trin. 23. Car. B. r. *For inferiour Courts are tied strictly to observe their ancient forms, and not to vary from them; For if they should be permitted, many inconveniencies would quickly follow by the unskilfulness of the Clerks.*

Although the Plaintiff have signed his Judgement against the Defendant, yet he may wave it, if he will, and accept of a Plea from the Defendant. *Trin.* 23. *Car. B.r.* and 24. *Car. B.r. For the signing of it doth not make it a Record of the Court, but if it were entred, he could not have it.*

A special Judgement is, where one brings an action for divers things, as for example, A man brings an *Ejectione firmæ pro toto croſto*, &c. and the Plaintiff hath a Judgement for one, or more of the things, for which the Action is brought, and doth wave some one or more of the other things for which the Action is brought; in such case he must release his Damages to all, and yet he may have his Costs of Suit. *Trin.* 23. *Car. B.r.*

If a Verdict pass for the Plaintiff, and the Plaintiff will not enter his Judgement upon this Verdict, the Defendant may enter it, and so it is of a Writ of Enquiry of Dammages. *Trin.* 22. *Car. B. S. If the Plaintiff will not file it, the Defendant may do it. For the Plaintiff ought to be content with what the Law gives him.*

If a Clark of this Court will not appear to an Action that is brought here against him, the Plaintiff may enter Judgement against him. *By* Woodward *Clark of the Court.* Trin. 23. Car. B.r. *But Q. what Judgement, whether a Judgement upon a nihil dicit, or some other special Judgement.*

The Court will not give a Judgement, which they know

know would be against the Law; although the Plaintiff and Defendant do agree to have such a Judgement given. *Trin.* 23. *Car. B. r. For the Judges are to do equal justice according to their best skill, and not to err willfully.*

If the Plaintiff will not bring in his *Postea* into the Court according to the Rules of the Court, that the Defendant may have time to speak in Arrest of Judgment; and the Defendant do make proof of this to the Court upon oath; the Court will Arrest the Judgement untill the Plaintiff shall move for Judgement. *Mich.* 23. *Car. B. r. And he may thank himself for this trouble and delay.*

Judgement cannot be entred untill four dayes after the *Postea* is brought in and entred in the Office, but after that if nothing be spoken in the mean time to Arrest the Judgement, it may be entred. *Mich.* 23. *Car.* and *Pasc.* 24. *Car. B. r.*

If a Judgement be entred contrary to the Rule of Court, made to stay the entry of it; the Court upon motion will vacate the Judgement and amerce the party that entred it. *Mich.* 22. *Car. B. r.*

Where a Verdict is imperfect, there can be no Judgement given upon it; but the Court will grant a new *venire facias* to summon another Jury to try the issue again. *Mich.* 23. *Car. B. r. For the parties shall not be compelled to go further back in their proceedings then where the error was made, and that was by the Jury.*

If one bring a Writ of Error to reverse a Judgement given in the Common Pleas, and do not remove the Record by a *Certiorari*, the Plaintiff may move in the Common Pleas for Execution, notwithstanding the Writ of Error brought. *Mich.* 23. *Car. B. r.*

But

But Q. Whether they will grant it, because by the Writ of Error their hands are foreclosed; but now by the late Act a Writ of Error is no Supersedeas, *and so the Law in this point is altered.*

In a Judgement given for the Plaintiff to recover a sum of money, the sum must not be written in figures, for if it be it is error, but it must be expressed in words at length. *Mich. 23. Car. B.r. For a Judgement consists in Words, and Words are made of letters and not of figures which can spell nothing.*

If a Judgement be given upon an Issue tryed in a cause wherein there is also matter of Law in dispute upon another Issue in that cause before the matter in Law be determined, yet the Judgement is good. *Hil. 23. Car. B.r.*

Upon the Affirmance by the Parliament of a Judgment given in this Court, and removed by a Writ of Error brought in Parliament to reverse this Judgement; the Parliament useth to have a *Remittitur* entred upon the Judgement Roll, to send it back into this Court, that this Court may award Execution upon the Judgement. *Hil. 23. Car. B.r. For Execution ought alwayes to Issue out of that Court where the Judgement was given.*

If a prisoner which is Endicted for Felony will not plead to the Endictment, he is by the Law to be pressed; but if a prisoner endicted for Treason, will not plead at all to the Endictment, or answers impertinently, and not to the purpose, judgement shall be given against him, as if he were found guilty. *Pasc. 23. Car. B.r. In Sir* John Stowels *Case as I remember.*

If there be not four dayes of a Term to come after a *Pasten* is returned in Court, before the Term be ended,

ed, so that the Defendant cannot have four dayes liberty to speak in Arrest of Judgement, as by the course of the Court he ought to have, there ought not to be any Judgement given in the cause untill the next Term after, that the Defendant may have so much time to speak in Arrest of Judgement, as he ought to have. *Pasc. 24. Car. B. r.*

If a Judgement be but seven years old, the party may by the course of the Court, have a *Scire facias* to revive it without moving of the Court for it, and if the Judgement be under ten years old, the party may move for a *Scire facias*, to revive it at the side Bar; but if it be ten years old or more, a *Scire facias* to revive it, must be moved for in Court. *Pasc. 24. Car. B. r.*

One may speak in Arrest of a Judgement given upon a *nihil dicit*, at any time during the same Term that the Judgement was obtained. *Pasc. 24. Car. B r. For the Defendant is more favoured in a judgement given against him upon a* nihil dicit, *then where a Judgement is given against him upon a Verdict, because in the former Case he makes no defence, but in the latter case, it is intended he hath made his full defence.*

Where one entire Judgement is given against two several persons, and one of them is an Infant, the whole Judgement is void. *Trin. 24. Car. B. r. For it being void to the Infant, and being an entire Judgement which cannot be divided, it must necessarily be void as to the other, and so void in toto.*

If a peremptory rule be given for the Defendant to plead at a certain day, if he do not plead accordingly the Plaintiff may enter Judgement against him, without any further moving of the Court. *Trin. 24. Car. B. r. For it was the favour of the Court to give*

him that day, to plead, and if he make no good use of it, it is his own fault, and the Court will not further delay the Plaintiff.

If the Plaintiff do demur to the Defendants Plea, and the Defendant do joyn in the demurrer, if the Plaintiff will not maintain the demurrer, Judgement shall be given against him. *Trin. 24. Car. B. r. For thereby it is implyed that he confesseth the Defendants Plea to be good, and consequently that he hath no cause of Action.*

That which a Judge of this Court doth act in his Chamber, as a Judge of this Court is accounted to be done in Court. *Trin. 24. Car. B. r. For it is in order to the proceedings in the Court.* Q.

Where a Judgment is entire it cannot be reversed in part, and stend good as to another part, but if it be not an entire Judgement it may. *Trin 24. Car. B. r. For an entire Judgment cannot be divided to make one part of it good and another part of it to be erroneous.*

If the Plaintiff do give the Defendant two rules for him to plead according to the course of the Court, and the Defendant do not plead, when the time of those two rules are out, the Plaintiff may enter a Judgement against him upon a *nihil dicit*, but not before. *Mich. 1644. B. r.*

If a man bring an Action of Debt against two Executors, and they plead they have not Assetts, and thereupon Issue is joyned, and it is found that one of the Executors had Assetts at the time of the Action brought, but that the other Executor had not Assetts the Plaintiff shall have Judgement to recover the Debt against that Executor who was found to have Assetts, and a *nil Capiat per billam* shall be entred against the Plaintiff, as to the other Executor, who

was found to have no Assetts. *Mich.* 24. *Car. B. For the possession that one Executor hath of the Testators goods is not the possession of the other Executor.*

It is against the course of practice in this Court to admit the principal, to acknowledge a Judgement for his Bail; but in the Common Pleas they use to admit it. *Mich.* 1649. *B. S. But it is said that the Common Pleas will not admit it now since the rules of regulation made.*

If in an Action of Trespass and Ejectment brought to try the title of the Land, the owner of the Land, whose title is concerned, will not save the party that is made Ejector, harmeless from all prejudice that may befall him by reason of the Suite; he may confess Judgement unto the Plaintiff, for the Land in question. *Mich.* 1650. *B. S. For to avoid further trouble and charge by reason of the suite which concerns him not, either in gaine or lost.*

If a Judgement is given, which is not warranted by the Verdict upon which it is given, that Judgement is not good. *Mich.* 1649. *B. S.*

If a Judgement given in an inferior Court, be not according to the ancient form of Judgements given there: such Judgement is erroneous, and this Court will reverse it upon a Writ of Error brought. *Pasc.* 1650. 24. *Mail. B. S.*

If an Action of Trespass, or Trover and Conversion be brought for divers several things, and the Verdict doth finde that the Defendant had but some of the things for which the Action was brought, yet the Jury doth give costs and dammages for all the things laid in the Declaration; if the Plaintiff will release his costs and dammages, for those things which were not found, he may have Judgement for the other

things which are found. *Mich.* 1649. *B. S.*

It is dangerous to take a Judgement acknowledged in the vacation, as of a preceding Term; and it ought to be made a Judgement of the subsequent Term. *Mich.* 1649. *B. S. Yet it is common practice to do it.*

If one be Out-lawed in an Action brought upon a Jugdment by a *nihil dicit*; and that Out-lawry is reversed by a Writ of Error, the Judgement is also to be reversed. *Mich.* 1649. *B. S. For it seems one may not be twice Out-lawed upon one Judgement which might be if the Judgement should not be reversed, for the Plaintiff might bring a second Action upon the same Judgement, and Out-law the Defendant again.*

If one take a Judgement he cannot consent to vacate it. *Mich.* 1649. *B. r. But he may acknowledge satisfaction upon record.*

If the Defendant in an *ejectione firma*, will not plead according to the rules of the Court, Judgement ought to be entred against him by the ancient Rules of the Court, without moving of the Court, and the moving for it is grown in use, but of late times, and it is a new charge brought upon the Clyent, to put him to this motion, and there was no inconvenience in the old way, and therefore this order is to be set up in the Office, and to take effect the next Term, and in the mean time the Clyents to have notice of it. *Hill.* 1649. 23. *Jan. B. S. By* Rolle *Chiefe Justice.*

A Judgement was reversed, because it was given for more then was demanded in the Declaration. *Paſc.* 1650. 3. *Maii. B. S.*

A Judgement was reversed for these errors, because the time when the Judgement given, was in figures. 2. Because the sum recovered was expressed in figures. 3. The *venire facias* was with an *&c.* And 4. the cause

cause of Action did not appear by the Record to be within the jurisdiction of the Court where the Judgment was given. 1649. *Hill. B. S. This was a Judgment given in an inferior Court.*

A Judgement was reversed because it was entred thus, *Idcu consideratum est ad eandem curiam*, whereas it ought to be *per eandem curiam. Hill.* 1649. 30. *Jan.* and 1. *Feb. For it might be considered at the Court, which is onely the place where the Court is held, and yet not be the Act of the Court.*

After an Issue is joyned to be tryed by the Plaintiff and the Defendant; the Plaintiff may if he will without going to tryal accept of a Judgement from the Defendant without any Verdict in the Case. *Pasc.* 1650. *B. S.* 24. *Maii. For the Defendant is not prejudiced by it, if he will acknowledge the Judgement, and the Plaintiff could have recovered no more, if he had had a Verdict, and may waive his costs if he please.*

If a thing be entred in a Judgement, which is not mentioned in the Plaintiffs Declaration, upon which the Judgement is given, the Judgement is not good. *Pasc.* 1650. *B. S.*

Judgement was given against one of not *sane memorie*, and held good, for by *Rolle* Chief Justice, the Defendant may bring a Writ of Error to reverse the Judgement and Assigne this for error. This was in the Case of *Disne* and *Grigson. Trin.* 1650. *B. S.* 26. *Junii.*

A Judgement ought not to be entred, untill the costs be taxed, and the Judgement Signed by the Secondary of the Office. 2. *Julii.* 1650. *Trin. B. S.*

A Rule of Court was made upon a motion at the Bar, that the Secondary should enter a Judgement in a Cause wherein a Tryall was to be had, as a Judge-

ment of the Term, next preceeding the Term wherein the Tryal was to be, and that the Secondary ſhould expreſs in the Rule, that the Rule was made by the conſent of the Plaintiff, and of the Defendant in the Cauſe. 2. *July*. 1650. *B. S. For* conſenſus tollit errorem; *and otherwiſe the Court would not have made ſuch a Rule.*

This Court will not admit the principal in an obligation to ſuffer a Judgement for his ſuerties that are bound with him in an obligation; but the Court of Common Pleas doth uſually admit it. 12. *Nov.* 1650. *B. S. By* Rolle *Chief Juſtice, But now they have altred that courſe in the Common Pleas, as it is ſaid; and in truth it was not reaſonable; for though a man may be contented to be a Suerty in an obligation for another, yet it followes not that he would be contented to be liable to a Judgement for him, whereby his goods may be ſwept away by an Execution, before he is aware of it.*

The courſe for one to acknowledge a Judgement, is for him that doth acknowledge it, to give a general Warrant of Atturney for any Atturney or ſome particular Atturney of that Court, where the Judgement is to be acknowledged to appear for him at his ſuite, who is to have the Judgement acknowledged unto him, and to receive a Declaration from him, and to plead *Non ſum informatus*, and therenpon Judgement is entred for want of a Plea. 14. *Nov.* 1650. *B. S.*

A Judgement upon a *nihil dicit* is not a perfect Judgement, untill the Writ of Enquiry of dammages taken out upon this Judgement be executed. 16. *Nov.* 1650 *B. S. For the dammages are to be expreſſed in the Judgement, which cannot be known*

What

what they are, untill the Jury Empanelled by the Sheriff, to enquire of the dammages have found them.

When a Plea is pleaded, if the Atturney on the other ſide will not ſet his hand unto it as he ought, and joyn in the Iſſue, Judgement may be entred againſt him by the Deſendants Atturney. 6. *Feb.* 1650. *B. S.* 2.

If a Judgement in an *ejectione firmæ* be *quod recuperet debeat*, and a Writ of Error be brought to reverſe this Judgement, this Writ of Error is not well brought, but muſt abate, for here is no Judgement given for the preſent; for then it ſhould be *recuperet* in the preſent Tence. *Trin.* 1651. *B S.*

By *Rolle* Chief Juſtice, a Judgement ought not to be entred for want of a Councellors hand ſet unto a ſpecial Plea, as by the Rules of the Court, there ought to be, without firſt acquainting of the Secondary of the intention to enter Judgement, for ſuch a Plea without a Councellors hand, is a Plea, and it may be there needeth not a ſpecial Plea, and the party muſt not be his own Judge, whether it be good or no. *B. S*

By *Rolle* Chief Juſtice, in an Action of Treſpaſs brought *quare vi & armis*, a *Capiatur* ought to be entred upon the Judgement where the Judgement is given before the Act of Oblivion was made, but if Judgement be to be given in an Action brought for a Treſpaſs done ſince the Act of Oblivion was made, and which is pardoned by the Act *pardonatur* ought to be entred upon the Judgement and ſo the Judgment in the Treſpaſs, and the Act of Oblivion are both ſatisfied. 1651. *B. S.*

One may ſpeak in Arreſt of a Judgement given

upon a *nihil dicit*, after the Writ of Enquiry of dammages is executed upon that Judgement. *Mich.* 23. *Car. B. r.*

Infant.

An Infant ought not to appear to an Action brought against him by his Atturney; but he must appear by his Guardian. *Pasc.* 24. *Car. B. r. For he cannot make an Atturney, and the Guardian is Assigned (but with the consent of the Infant) by the Court.* Trin. 24. Car.

An Action of Debt doth lye against an Infant upon his promise to pay for necessaries, as meat and drink, lodging and apparel; but if the Infant and the party from whom he had these necessaries, do come to an account, and reduce that which the Infant is endebted for them, to a certain sum of money, and upon this account the party brings an Action against the Infant, for the money stated to be due by the account; this Action will not lye against the Infant. *Trin.* 24. *Car. B. r. For the account upon which the Action is grounded, is void; for an Infant can agree to no such account.*

Justification.

Where the Action concerns a transitory thing, if the Defendant do justifie the taking or doing in one place, this is a Justification in all places; but if the Action concern a local thing, a Justification in one place, is not a Justification in another place. *Pasc.* 24. *Car. B r. For in the former Case the place is not material, but the meer doing or taking of the thing, but in the latter the place is material, for the Defendant (it may be) may be able to justifie in*

in one place, and yet may be guilty in another place.

Jurisdictions.

The essentiall difference betwixt Free Chappels, and other Churches, and Chappels is, that all free Chappels are free from the Jurisdiction of the ordinary. *Hill. 23. Car. B. r. So that the ordinary is not to intermeddle with them in any thing that doth concern them or to visit them; whereas all other Churches, and Chappels are within the Jurisdiction of some ordinary, and may be visited.*

The Jurisdidiction of a Court where a cause is depending, cannot be extended further in relation to that cause by the Consent of the Plaintiff and Defendant, then of right it ought to extend. *Pasc. 24. Car. B. r. For this would be for the parties to erect (as it were a Court) which was not before, for the tryal of their cause; and by this means the Jurisdictions of every Court would grow to be unlimited.*

This Court hath no conusance of the proceedings in Parliament. *Pasc. 24. Car. B. r. So held in* John Lilburns *Case; because the Parliament is the supreme Court, and subject to no other Court.*

This Court hath a general Jurisdiction to reform the abuses of all persons in their behavior throughout all *England*; and the abuses and miscarriages of all Courts of Justice throughout all *England. 9. Feb. Hill. 1649 B. S. 3. Julii. 1650. B. S.*

If the Court of Chancery do grant a *Habeas Corpus* to a prisoner that is in the custody of the Marshall of this Court, this Court hath not power to restrain the prisoner, so long as the *Habeas Corpus* is in force. *3. July. 1650. Trin. B. S. In the Case of Sir* Arthur Smithes *and* Workman.

This

This Court hath Juriſdiction over all the Courts of *England* in all Mandatory Writs. 10. *Feb.* 1650. *B. S.*

Injunction.

An Injunction out of the Court of Chancery doth not lye to ſtay execution after a Judgement given at the Common Law; although the Bill upon which ſuch Injunction is granted, were put in before the Judgement given at Law, for although the Chancery make a difference between exhibiting the Bill before the Judgement given, and the exhibiting a Bill after the Judgement given, yet this is no good difference, for it is a like in both Caſes. *Trin.* 23. *Car. B. r. But the Chancery, may if there be cauſe, ſtay proceedings at Law before Judgement given.*

Information.

If by a penal Statute he that prefers an Information againſt another, for an offence done againſt this Statute, is to have half of the penalty, which ſhall be recovered upon this Information, there if an Informer do prefer an Information upon the Statute, before any Information is preferred by the King; the King cannot hinder the Informer from having his proportion of the penalty given him by the Statute; but if the King do firſt prefer the Information, he may Inform for the whole penalty. *Paſc.* 23. *Car. B. r. For the King is not bound to ſtay till an Informer prefer the Suit, but may ſue at any time, and if no body Inform, none hath right to the penalty, but the King, and he may pardon it.*

If the Marſhall of the Kings Bench do miſdemean himſelf

himself in his office, to the prejudice of any person, he who is prejudiced by his misdemeanor, may prefer an Information against him in this Court. *Hill.* 23. *Car. B. r. And if he be found guilty upon a tryal thereupon had, he may be fined by this Court, or put, put out of his Office, if the Court shall see cause to do it.*

The Clerk of the Crown ought not to set his hand to an Information without examining the cause, for which it is preferred. *Pasc.* 24. *Car. B.r. For if there be not (at least in probabilities) good matter in Law to ground an Information upon, the party that doth prefer it, is not to be assisted and encouraged in it; for the Law doth abhor vexatious and causeless suites.*

An Information may be preferred in this Court against the Inhabitants of any Town or Village in *England* for the not repairing the High-wayes which by Law they are bound to repaire. *Mich.* 1649. *B. S. For this Court may punish offences done against the Weal Publick all* England over.

If an Information be preferred at the Suite of the party, there the Endictment ought to be brought to a tryal at the charges of the party, that prosecutes the Endictment; but if an Endictment be preferred at the Suite of the King, there the Endictment shall be brought to tryal at the costs of the party against whom the Information is brought. *Pasc.* 1650. 24. *Maii. B. S.*

Although an Information be faulty in the body of it, yet upon a motion the Court will not quash it, but the Defendant must demur to it for its insufficiency. *Pasc.* 1650. *B. S* 24. *Mali.*

Justice

Justice of Peace.

A man may be a Justice of Peace in one part of *Yorkeshire*, and yet not be a Justice of Peace in every part of the County. *Hill. 22. Car. B.r. For* Yorkshire *is divided into divers parts, called Ridings,* viz. *into the East Riding, West Riding, and North Riding; and he may be a Justice of Peace in one of those Ridings, and yet not a Justice of Peace in another of those Ridings; but generally a Justice of Peace of a County, is a Justice of Peace all the County over.*

The Peace was prayed upon Articles read in Court against one, one of which Articles was that the party against whom the peace was prayed, did threaten that he would burn down the house of him that prayed the peace; and upon that Article it was granted. *Hill. 21. Car. B.r. To grant the Peace against one, is to grant that the process of the Court may issue out of the Crown Office against him, to bring him into the Court, to finde sureties to be bound with him in a recognisance to the King to keep the peace towards all the Kings Liege people, but more especially towards the party that prayes the Peace.*

A Justice of Peace ought not to binde any person to the good behaviour, upon a general information, and if the party accused, doth refuse to be so bound, and find Sureties to be of good behaviour; yet the Justice of Peace ought not by the Law to send the party to the Goal for refusing it. *Pasc. 23. Car. B.r. For he that desires to have one bound to the good behaviour, must shew some particular miscarriages, wherein the misbehaviour of the party consists; for* accusatio generalis

ralis est nulla, *for what defence can be made to it?*

The Justices of Peace ought by the duty of their places to attend at the Assizes, and at the publike Sessions of the Peace, held for the County whereof they are Justices *Pasc.* 23. *Car. B. r.*

The Commission of Oyer and Terminer doth extend to those that are Justices of the peace. *Pasc.* 23: *Car. B. r.* Q. *Whether it be generally so.*

A Justice of Peace may actually Arrest and commit the party to prison, that doth a Felony in his own view, without any warrant made under his hand and seal to arrest him; but if there be an information made to a Justice of Peace, that one hath committed Felony, there the Justice must make a Warrant under his hand and seal to Arrest the Felon, and may not do it by word of mouth. 1650. *B. S.*

It is usual in the Capital Office, if one be bound to the peace there, to keep him bound to the peace during his life. But by *Rolle* Chief Justice, there is no reason why this should be done. 13. *Maii.* 1651. *B. S. For the party may be come reformed, and so no cause to continue him bound and his sureties for so long a time.*

A Justice of Peace may require a Bond or Recognizance of a thousand pound of one for his keeping the peace if he see cause for it, in regard that the party to be bound, is a dangerous person, and likely to break the Peace, and to do much mischeif. *Pasc.* 1652. *B. S.*

This Court will bind one to the Peace if they see cause to do it, although there be no Oath made by any person against him that is to be bound, that he goeth in fear of his life of him. *Trin.* 1652. *B. S. For the*

Oath

Oath of a party is but to manifeſt unto the Court, that there is juſt cauſe why the party ſhould be bound unto the Peace, and therefore if the Court be ſufficiently ſatisfied without ſuch an Oath, that there is good cauſe to bind the party to the peace, they may do it without ſuch an Oath.

If one do take his Oath in this Court againſt another, that he doth go in fear of his life of him, and prayes the peace againſt him, he againſt whom the peace is thus ſworn, and the Peace prayed, ought to be committed to priſon, if he do not find Suerties to keep the peace, although there be no Articles exhibited and ſworn againſt him. 1652. *B S For there appears ſufficient cauſe by the Oath for the Court to do it, though there be no Articles exhibited, as the uſual courſe is to do.*

Iſſues.

The Court doth uſe upon a motion, to order that good Iſſues be ſet upon a Sheriff or other Officer, for not bringing in the body of the party into Court, upon a Writ of *Habeas Corpus* directed unto him, or for not making a good retorne; but they will not order what ſumme ſhall be ſet upon him, but leave that to be done according to the cuſtome of the Court. *Hill. 22. Car. B. r. For where things are to go on in a common way of practice, there the Court will not make a ſpecial Rule in the Caſe.*

When Iſſues are ſet upon a Sheriff or other Officer by the Court, for the neglect of his duty; and afterwards upon ſome reaſons ſhewed to the Court, why they ſhould be taken off or diſcharged, the Court doth diſcharge them: the Roll ought to be marked, to ſhew they are diſcharged, otherwiſe Proceſs may iſſue

iſſue out to levy theſe Iſſues, notwithſtanding they are diſcharged by order of Court. *Hill.* 22. *Car. B.r. For as the Iſſues do appear upon the Record, ſo they cannot be diſcharged but upon record.*

If an Iſſue be not well joyned, it is helped after a verdict, by the Statute of *Jeofailes:* but if there be no Iſſue joyned, and a Verdict paſſeth, this is erroneous and is not helped by the Statute. *Mich.* 23. *Car. B.r. But there muſt be a repleader, to the intent there may be an Iſſue joyned, upon which a tryall may be had.*

Judges.

The Judges are to have a paper of the Cauſes which are to be ſpoken to in Court, ſent unto them particularly at five of the Clock in the evening, the day before they are to be ſpoken to in Court. *Hill.* 22. *Car. B.r. That they may have time to prepare to ſpeak to them.*

Juſtices of Oyer and Terminer, cannot proceed to try perſons endicted upon endictments not preferred before themſelves, but the Juſtices of the Goale-delivery may. *Trin.* 23. *Car. B.r. For the Juſtices of Goale-delivery, have a more generall Commiſſion for proceeding againſt maleſactors, than the Commiſſioners of Oyer and Terminer have.*

The Judges of the Common Law, have no ordinary juriſdiction to examine Witneſſes in their Chambers, but by the conſent of the parties, and by the Rule of the Court they may do it: and there uſeth not to be any croſs examinations of the party, but the courſe is, to put the Depoſitions in writing on both parts, and then the Judg doth examine the parties upon their ſeverall oathes, whether their Depoſitions be

be true. *Mich.* 23. *Car. B. r.*

Where there do speciall and doubtfull matters arise upon the reading of a Record, so that the Court is not (for the present) satisfied of the Law; the Attorneys on both sides ought to prepare Books, *viz.* Copies of the Record for the Judges, at the Clyents equall charge, that the Judges may upon view of the Record, the better consider of the matters in dispute. *For it is the course for the Attorneys, to make their Clyents for to pay for such Books in all such Cases, although they never make any for the Judges.* By *Rolle* Chief Justice.

The Judges of this Court declared, that they would not sit longer in Court, then till one a clock in the afternoon upon the last day of the Terme, and so they said the Common Pleas had done. *Trin.* 1651. B. S. *This was, that the Attorneys might not defer their Clyents businesses to the last of the Terme, as too usually some doe*

Jeofailes.

If an Issue be joyned upon a collateral point, if there be no place alledged whence the Venue may come, this is ayded by the Statute of Jeofailes: but if the Issue be not joyned upon a collateral point, and there is no place alledged from whence the Venue may come, it is not helped by the Statute. *Mich.* 22. *Car. B. r.*

Interrogatory.

One who is by the rule of the Court to be examined upon Interrogatories, ought to attend the Master of the Office, who is to examin him within four dayes after the Interrogatories are put in for him to be examined upon. *Mich.* 22. *Car. B. r.*

Intendment

Intendment and Intentions.

The Law doth not punish any one for the Intention to do ill, if the Intention be not put in execution, except it be in the case of Treason; for there Intentions, if they be clearly proved by circumstances, shall be punished equally as if they had been put in execution. *Trin. 22. Car. B. r.* *But this is only in high treason, and is done* in terrorem, *to deter men from that odious offence, and of so high a nature, being not acted against the Person of one sole person, but even against the whole Kingdom, which would suffer by it.*

There shall not be Intended to be more then one Parish in a City, although there be many; except the contrary be shewed. *Trin* 24. *Car. B. r.* *For it is not of the essence or constitution of a City, to consist of more Parishes then one, but there may be a City that hath but one Parish in it, as the City of* Rochester *in* Kent.

If one be bound in an Obligation to *J. S.* in a certain summe of money, and in the *solvendum* of the Bond, it is not expressed unto whom the money shall be paid, the Law will intend it is to be paid to the Obligee. *Pasc. 24. Car. B. r.* *Because no other person is particularly named, unto whom the payment should be made; for it shall be intended, the money was to be paid to some body, and there being no person particularized to whom it should be paid, it is but reasonable it should be paid to the Obligee.*

A Court which is pleaded (generally) to be held *secundum consuetudinem*, shall be intended to be held according to the Common Law; but if it be pleaded to be held according to a Custome, whereof the me-

mory of man is not to the contrary, it shall be adjudged to be a Court held by Custome. *Trin. 24. Car. B. r. For a Custome must be so particularly pleaded.*

If the Plaintiff do plead, that the Defendant did become bound unto him *per Obligationem suam*, it shall be intended, that this Obligation was sealed and delivered unto the Plaintiff. *Mich. 24. Car B. r. For else he did not become bound unto him by his Obligation; for an Obligation that is not sealed and delivered is no Obligation, nor is the Obligee bound by it.*

The Intent of the parties shall not be implied against the direct Rules of the Law. *5. Feb. Hill. 1649. B. r. For an Intent is but to be guessed at, and doth not certainly appear: but the Law is direct and plain, and therefore it shall not be presumed, the parties did mean to do any thing against Law, where their intent doth not appear by express words.*

Impossibility.

A thing which is Impossible in the Law, is all one with a thing which is Impossible in nature. *21. Car. B. r. For the Common Law is not contradictory in any thing to the Law of nature, but agrees with it in all things, and may be said to be the same in effect with it.*

Impropriation.

An Impropriation cannot be made but by the Licence of the King. *Mich. 1649. B. Sup. And he may do it as he hath the supreme authority in all Ecclesiastical, as well as civil matters, within his dominions.*

Li-

Livery and Seisin.

A Corporation cannot make Livery and Seisin to pass away the Freehold Lands belonging to the Corporation, but they must make a Letter of Attorney to another, under their Common Seal, to make Livery and Seisin. *Mich. 23. Car. B. r. For Livery and Seisin must be made by one, and not by a multitude.*

If a Tenant for years of Land, do consent that Livery and Seisin shall be made of the Land let unto him, unto him that hath purchased the reversion of those Lands, and it be made accordingly, this is a good Livery and Seisin to make the reversion pass; although that the Tenant for years do not go off from the Land at the time when the Livery and Seisin was made, but was then in actual possession of it. *Mich. 23. Car. B. r. For his Term is not prejudiced by the Livery: For only the reversion passeth, and his Assent amounts but to an Attornment to him, to whom the Livery is made.*

If a Deed of Feofment be made of Land, *Habendum à die datus*, and the next day after the date of the Deed, the Feoffee gives Livery and Seisin of this Land, this is a good Livery and Seisin; but if this Livery and Seisin were made by an Attorney. Q. *Quid operatur.* Mich. 23. Car. B. r.

One may give Authority by Paroll unto another, to take Livery and Seisin of Lands for him; and if such Livery and Seisin be taken accordingly, it is good. *By* Rolle *Chief Justice.* Mich. 1650. B. S. *For this shews his assent to take the Lands by the Livery*

and Seisin, and the other is but as a Conduit-pipe to convey the Land unto him.

Lease, Lessor and Lessee.

If one take a Lease by Indenture for years of a ruinous house, or that wanteth Reparations, and do covenant in the Lease to leave the house at the end of the term in good repair, he is bound to do it, and an Action of Covenant doth lie for the Lessor against him, if he do it. 21. *Car. B. r. But if he had not covenanted expresly to do it, he had not been bound by Law to do it.*

A Lease which is only voidable, and not absolutely void, must be made void by the Lessors re-entry; but if a Lease be absolutely void, there needeth no re-entry. 21. *Car. B. r. That is said voidable which may be made void, if the Lessor will, and may be continued, if he please, at his election, it is made void by re-entry, and putting out the Lessee, or else it is continued by receiving the rent, and thereby acknowledging him still for his Tenant.*

Where the Freehold of Lands in question, in an Action of Trespas and Ejectment is entire, although these Lands be let out to several persons for years by several Leases, if he whose title is concerned, and doth intend to try the Title of these Lands, do seal a Lease of Ejectment upon the Lands only that are in the possession of one of the Tenants that holds parcel of these Lands; This is a good Lease, to try the title of all the Lands: But if the Freehold of the Lands in question, be not an entire Freehold, such a Lease sealed upon parcel of the Lands in question, is not good to try the title of all the

the Lands. *Pasc. 23. Car. B. r. For several Freeholds must have several Leases to try them: because they are the Right and Titles of several persons, or by several Titles.*

A Lease for years, although it be a very long Lease, cannot be entailed; For the nature of a Chattel cannot be turned into an Inheritance. *Hill. 23. Car. B. r. Which would be if such a Lease which is but a Chattel, might be entailed: for an Estate intayl is an Estate of Inheritance.*

A Lessee for years is not bound to repair the house let unto him, which is burned by accident; if there be not a special Covenant in the Lease, that he shall leave the house in good repair at the end of the term: But if the house be burned by the negligence of the Lessee, he shall repair it, although there be no such Covenant in the Lease. *Pasc. 24. Car. B. r. For by the Lessees Covenant, it shall be intended, that he took notice of what accidents might happen, and his Covenant shall be taken generally, and without exception, and strongest against himself.*

In a Lease for years by Indenture the term is not certain before the *habendum & tenendum* in the Lease. *Term. Trin. 24. Car. B. r. For though it do appear before the* habendum & tenendum, *that the Lands in the Lease mentioned are demised unto the Lessee, yet it doth not appear for how many years they are demised, nor when the Lease is to begin, nor when to end, until it is declared in the* habendum.

One may raise an Estate for life in Lands to another by way of use, *viz.* by covenanting with *A. B.* to stand seised to the use of *J. S.* for and during the natural life of *J. S.* without Livery and Seisin.

Mich. 24 Car. B. r. For the Estate is executed in the cestuy que use, by the Statute of Uses of 32 H. 8. without Livery.

If one be in Possession of Lands of another, and hath usually paid a Rent unto him for these Lands, although it cannot be expressly proved, that the Lands were demised at will to him that is thus in possession of the Lands, that is, that he should hold them as long as both parties should please, yet this holding of the Lands shall be interpreted to be by a Lease at will. *Mich. 1650. B. S. For it shall be presumed that he in possession doth hold the Lands, and that the owner of the Lands did receive the Rent for those Lands upon some Contract, made between the parties, for holding the Lands for some term, and for paying of such a rent for them, and a less time cannot be supposed, then to hold them at will.*

If one make a Lease for years, and after the Lessor enters upon the Lands let, before the term is expired or determined, and doth make a Lease of these Lands to another, this second Lease is a good Lease, untill the first Lessee doth re-enter. *2. Mich. Pasc. 1650. B. S. And then the first Lease is revived.*

Although a Lessee for years do lose his Indenture of Demise, of the Lands let unto him, yet he shall not lose his term in the Lands let by the Indenture, which is so lost, If it can be proved any way, that there was such a term let unto him by Indenture, and that it is not determined: so it is of any other Estate in Lands, if the Deed that created the Estate be lost, if it can be proved, that there was such a Deed made, and that such an Estate was conveyed by the Deed. *Pasc. 1650. 14. and 15. Mich. 1650. B. S.*

B. 8. For the Estate in the Lands is derived from the Party that made the Deed, and not from the Deed, otherwise then instrumentally and declaratively, to shew his minde and intent that conveys the Estate, as also the minde and intent of him that receives it.

Liberty.

Matters which do concern the Liberty of any one, ought to be determined as speedily, as lawfully they may be. *Trin. 22. Car. B. r. For Liberty is counted very precious, and exceedingly favoured in Law, not only in respect of the particular profit, which every one obtains by his Liberty, but also in respect of the Weal-publique; For one in prison is disabled to be usefull to himself, or any other.*

Where any thing is shewed to be done within a Liberty or a Franchize, there it is not necessary to shew within what County that Liberty or Franchize doth lie. *Trin. 23. Car. B. r.*

Leet.

If a Court Leet do not choose a Constable to serve within that Leet, the Quarter-Sessions of that County, where that Leet is, may choose one. *Mich. 22. Car. B. r. For the Commonwealth must not be unserved, and it much concerns the Peace of the Commonwealth, but more especially of the County wherein the Leet lies, to have such Officers chosen.*

Q. *Whether a Court Leet may enquire of private Assaults and batteries, if there be no blood shed in the Case? For* Bacon *Justice, and* Walker *apprentice of the Law of the Inner-Temple, held that a Court Leet might enquire of them. But* Rolle *Justice held the contrary.* Pasc. 24. Car. B. r. *because they are action-*

able at the Common Law only, by the Party injured, and are not publique offences against publique.

Limitation.

If a Limitation of an Estate in Lands be uncertain, such a Limitation is not good in Law, but void. *Hill. 22. Car: B. r. For the Law cannot tell what construction to make of such a Limitation, by reason of the incertainty of it.*

There is a difference between a condition precedent, annexed to an estate subsequent to this condition, and a Limitation subsequent annexed to an Estate presently vested. *Hill. 22. Car. B. r.*

A thing that is expresly limited in a Will by plain words, shall not be afterwards made incertain, by general words which follow in the said Will. *Hill. 23. Car. B. r. For that were to encounter a thing that is plain and certainly known, with that which is obscure and doubtfull.*

A Limitation of an Estate to begin after the determination of an absolute Estate in Fee-simple, is a void Limitation in Law, for if the Law should suffer such a Limitation to be made, this would be to suffer perpetuities to be made, which the Law doth abhor: but yet a Limitation of an Estate to begin after a Fee-simple upon a Contingency, is a good Limitation. *19. April. 1650. B. S. For such an Estate may never take effect.*

London.

By the ancient Custom of the City of *London*, there ought to be but four hundred Carmen allowed within *London*. Hill. 23. Car. B. r.

Latitat.

Latitat.

A Latitat out of this Court is in the nature of an original Writ, by which they proceed upon in the Common Pleas. *Mich.* 1649. *B. S.*

Mareschall.

THe Mareschal of the Mareschalsea of this Court is intended to be alwayes in Court, while the Court is sitting. 21. *Car. B. r. For it is his Office to be alwayes attending upon the Court to execute his Office in relation to the Court upon all occasions that may fall out.*

Manifrance.

None shall be compelled to shew a thing in pleading, which by common intendment they cannot have knowledge of. 22. *Car. B. r.* 38. *H.* 6. *f.* 3.

Motion to the Court.

Monday is a special day for motions in this Court by the ancient course: *Mich.* 22. *Car. B. r. Yet motions are made upon any day, as the businesses of the Court of the day will permit.*

One ought not to move the Court for a thing against which they have delivered their opinion. *Trin.* 22. *Car. B. r. But ought to rest satisfied with the Judgement of the Court.*

If moneys be upon a motion ordered to be brought into the Court, and are accordingly brought in, they ought not to be taken out of the Court,

Court, but upon a motion, and rule of the Court made therein. *Hill. 22. Car. B. r.*

If any thing be moved to the Court upon a Record, if the Record upon which the motion is made be not in Court when the motion is made, the Court will make no Rule upon such a motion. *Hill. 22. Car. B. r. For the Court will be satisfied by the Record, whether the matter of the Record upon which the motion is grounded, be so as is suggested by the Councell, and will not rest upon suggestions made at the bar.*

If there be divers Rules of the Court made in a Cause, and the party intends to move upon these Rules, he must produce the Rule that was last made in the Cause, and move upon that. *Pasc. 23. Car. B. r. Yet it is necessary also to have all the Rules made in the Cause, to satisfie the Court how the Cause stands in Court, and how it hath been proceeded in from time to time, and how the Rules depend upon one another.*

One party ought not to surprise another by a motion in Court, but he ought to move in such convenient time, that the other party against whom the motion is made, may have time to be heard, and to make his Defence. *Pasc. 23. Car. B. r.*

It is against the Rule of the practice of this Court to move matters in Law upon the last day of any Term, except it be where the Case is peremptory, or of necessity to be moved then. *Pasc. 23. Car. B. r. Because the other Party cannot have time to make his Defence, and that day is also a day appointed for motions.*

One ought not to move the Court for a Rule for a thing to be done, which may by the common Rules of

of practice of this Court be done without moving the Court for it, much leſſe ought the Court to be moved for the doing of that which is againſt the common Rules of practice of the Court. 24. *Car. B. r. For the Court is not to be troubled with, nor the Clyent put to the charge of needleſs motions, nor of motions not to be granted, and the former ſort of ſuch kinde of motions do favour of ignorance, and the latter of too much preſumption.*

When a thing queſtionable between the parties is to be moved to the Court for the ſetling thereof; he that intends to move it muſt give the adverſe party timely notice of the time (as near as he can) when he will move it. *Mich.* 1650. *B. S. And upon what he intends to move, that he may be prepared to anſwer the motion at the time when he moves, for the quicker diſpatch of buſineſſes.*

If a Rule of Court was grounded upon an *Affidavit*, he that will move the Court to make the Rule void, muſt when he moves produce the *Affidavit* in Court. *Hill.* 1649. 22. *Feb. B. S. That the Court may be informed upon what grounds the Rule was made, and whether there be cauſe ſhewed upon the motion, ſufficient to induce them to vacate the Rule.*

It is againſt the courſe of practice of the Court for any perſon to make a motion in his own Cauſe. 24. *Maii. Paſc.* 1650. *B. S. So ſaid in one* Thurſton *and* Maſons *Caſe, viz. for a Counſeller to do it.*

When the Court doth grant a thing to one upon a motion, which was in the power of the Court, either to grant it, or not to grant it, the party that hath his motion ſo granted unto him, is by the rules of the Court to pay 12^{d} to the box for it. 1650. *B. S. Which money is given to the priſoners of the Up-*

per-

per-bench prison, as it is said.

It is not usual to move for a Trial at the Bar upon the last day of the Term. 2. *Julii.* 1650. *B.S. Nor for the Secondary to make a Report, nor for a Prohibition, nor to vacate a Judgement, or such like cases, except both parties be in Court, and are contented with the motion, and prepared to speak in it.*

The three last dayes of the Term, if it be not an Issue Term, is appointed to hear motions only, and not other businesses, except they be peremptory, or upon other special occasions; But if it be not an Issue Term, then the two last dayes are only for the hearing of motions. 30. *Jan.* 1650. *B.S. The Issue Terms are* Hillary-*Term, and* Trinity-*Term; and they are so called, because though there be Issues joyned in every Term, yet not so many by much, as in these Termes, in regard of the Causes which are to be tried (all* England *over) at the Assizes, which do follow in the next Vacations after the said Terms,* viz. *the Lent-Assizes, and the Summer-Assizes, as they are commonly called.*

By *Glyn* Chief Justice, it is not the custome of the practice of the Common Pleas for a Serjeant at Law, to move for a Clark of the Court, and afterwards for his Clyent. *Mich.* 1655. *B.S. For it seems it is not intended there, that he doth move without a Fee for a Clark of the Court, and therefore if he should be so heard, he would have a double motion at one time, which no Court doth allow.*

Manslaughter.

A grand Jury may finde a Bill of Manslaughter to be *Billa vera per infortunium.* Pasc. 23. Car. B.r.

Mortgage.

Mortgage.

If Lands be Mortgaged to one, the interest in Law in these Lands is in the Mortgagee before the forfeiture of them. *Mich. 23. Car. B.r. For he hath purchased the Lands upon a valuable consideration, as the Law will intend, and though the Mortgagee may redeem them, yet it is not known, whether he will do it, or no; For it is in his power to do it, or not to do it, and if he do it not, then the Estate is absolute in the Mortgagee without any other act to be done to passe the Estate.*

Messuage.

One Messuage cannot be apurtenant unto another Messuage. *Pasc. 24. Car. B.r. For a Messuage is an entire thing of it self, and cannot be apurtenant to another thing.*

Non-sute.

UPon a Trial, when the Jury comes in to deliver in their Verdict, and the Plaintiff is called to hear the Verdict; If he do not appear after he is thrice called by the Crier of the Court, he is to be Non-sute, and the Non-sute is to be recorded by the Secondary, by the direction of the Court, at the prayer of the Defendants Councell. *Hill. 21. Car. B.r.*

When a Plaintiff is Non-sute, if he will again proceed in the same Cause, he must put in a new Declaration, and cannot proceed upon that Declaration, whereupon he did proceed in the Cause, wherein he became

became Non-suite. 22. *Car. B. r.* 16. *Ap.* 1650. *B. S. For by his being Non-suit, it shall be intended that he had no such cause of Suite as he declared in, and so that declaration is void.*

The King of *Spain* hath been Non-suit in *England Mich.* 22. *Car. B. r. And this stands with reason, for if a foraign Prince will take the benefit of the national Laws here, he must proceed and stand to the Rules and orders of the Court wherein he prefers his Action.*

If the Plaintiff will not proceed upon his Declaration, as he ought to do by the Rules of the Court, the Defendant may Non-suit him. *Mich.* 1649. *B. S.*

Although upon a tryal the Plaintiff be called to hear the Verdict, and do not appear to hear the Verdict when he is called, and thereupon the Court direct the Secondary to record the Non-suite; yet if afterwards the Plaintiff do appear, before the Non-suite be actually recorded, the Court may proceed to take the Verdict. *Trin.* 1651. *B. S. For it is not a Non-suit untill it be recorded by the Secondary, and then it is made part of the record, and is in the nature of a Judgement against the Plaintiff.*

If the Plaintiff be not ready at the tryal with his Record when the Jury is called, the Court will call him Non-suit. By *Rolle* Chief Justice. 1651. *B. S. For it shall be intended, he will not proceed in his cause any further.*

Nolle Prosequi.

A *Nolle Prosequi* is, where there are divers Issues joyned between the Plaintiff and the Defendant, and the Plaintiff enters upon the Roll, a *Nolle Prosequi*; That is to say, that he will not proceed upon one or more

more of the Issues joyned, and yet he may proceed to tryall upon the rest of the Issues. *Hill.* 23. *Car. B.r.*

Nusance.

A Nusance made in a Port or Haven by the sinking of a Ship there ought to be removed by the owner of the Ship, and if he do it not, he may be endicted for it, as for making a Common Nusance. 21. *Car. B.r. For it is prejudicial to the Commonwealth in hindring of Trade.*

An Action upon the Case ought to be brought against one that makes a private Nusance, and he ought not to be endicted for it. *Pasc.* 23. *Car. B.r. For Endictments ought to be in the Kings name, and do presume to be preferred for offences done against the publike.*

A common Nusance may be abated or removed by those persons who are prejudiced by it. *Pasc.* 23. *Car. B. r.*

Nomine Pœne.

A *Nomine Pœne* for the non-payment of a Rent, ought to be legally demanded, if the Rent be behind, as well as the Rent is to be demanded before the grantee of the Rent can distrain for it. 21. *Car. B. r. For the* Nomine Pœnæ *is of the same nature as the Rent is, and is issuing out of the Land, out of which the Rent doth issue.*

Notice.

The Plaintiff and Defendant are both bound at their perill, to take notice of the general Rules of practice

practice of this Court; but if there be a special particular Rule of Court made for the Plaintiff, or for the Defendant, he for whom the Rule is made, ought to give Notice of this Rule unto the other; or else he is not bound generally to take notice of it, nor shall be in contempt of the Court, although he do not obey it. *Pasc. 24. Car. B. r. Mich. 1649. B. R. For general rules are the general practice of the Court, whereof every one must take Notice of that hath to do there, but particular rules are made upon particular and extraordinary matters, happening in the proceedings upon the motion of one of the parties made to the Court, of which the other may be ignorant.*

The Court is bound *Ex Oficio* to take Notice of all matters which do appear upon the Record depending before them; but of matters *Dehors, viz.* to search the Almanack for dayes, and to compute times mentioned in the Record, they are not bound *Ex Oficio* to do it. 21. *Car. B. r.* 24. *Car. B. r.* Q.

The Court is not bound to take Notice of the new stile, but of the old English stile. 21. *Car. B. r. For the old is that whereby all accounts in the Common Law are guided, and not by the new which is foreign, and goes ten dayes before the* English *stile or account.*

The Plaintiff ought to give the Defendant eight dayes Notice *exclusive*, before he executes his Writ of Enquiry of Dammages, or else the Court will quash it, although he have executed it, and put him to a new Writ of Enquiry, upon the motion of the Defendant made to the Court of his want of such Notice, and proof thereof by Affidavit. *Trin. 22 Car. B. R.* and *Pasc. 1652. B. r. Exclusive is meant, that the day upon which the Notice is given, is not to be one of the eight dayes, but the Writ is to be executed upon the*

the ninth day; and so long Notice is to be given that the Defendant may have time sufficient to defend himself by his Counsel, and Witnesses upon the evidence given against him before the Sheriff and the Jury, by the Plaintiff.

The Common Law doth not take Notice of the intentions of the party to do any unlawful Act, except it be in case of high treason. *Trin. 22. Car. B. r. For mans Law is to regulate the words and Actions of men, and not the thoughts, of which it cannot have consisance; But Gods Law extends to the thoughts.*

This Court is to take Notice of a general Ordinance of Parliament, *viz.* such a one as concerns the Publique; but not of a Parliament Ordinance which concerns some particular persons. *Mich. 24. Car. B. r. Except such particular Ordinance do appear before them by pleading or otherwise.*

If a Declaration be put into the Office, although it be not filed, yet is the Defendants Atturney bound to take notice of it. *Mich. 22. Car. B. r. For it is the Duty of the Plaintiffs Atturney, onely to put the Declaration into the Officer, and the Officer in the Office is to file it, and though it be not filed, yet may the Defendants Atturney take a Copy of it.*

None is bound by the Law to give Notice to another of that which that other person may otherwise inform himself of. *Mich. 22. Car. B. r. Except he tye himself by special covenant and agreement to do it; for the Law will not put an unnecessary trouble upon any man.*

If one do commence an Action in this Court against another, and doth not proceed to a tryal in his action, by the space of a whole year, next after he

began his Suit, he ought afterwards by the Rules of the Court, to give the Defendant one whole Terms Notice that he will try his cause, before he proceed to a tryal therein. *Mich. 22. Car. B. r. For his delay might give occasion to the Defendant to conceive that he intended to let his Action fall, and so to neglect to make provision for his Defence at the tryal, and therefore it is but reason that he should have more than ordinary Notice in an extraordinary case.*

If the Plaintiff give the Defendant Notice for a tryal against him, and do not try his cause the same Term he gave Notice for the tryal, he ought by the Rules of the Court to give the Defendant new Notice before he proceed to a tryal afterwards; but if the Plaintiff do try his cause the same Term wherein he gave Notice he would try his cause, although it be at another day after the day he gave Notice he would try it; yet he is not bound to give new Notice before he try it, for the Defendant is bound to attend the tryal at his own perill. *Mich. 22. Car. B. r. So it is where Notice is given for a tryal at the Assizes, and by reason of multiplicity of business, the cause cannot be tryed at that Assizes: but though the cause cannot be tryed at one day of that Assizes, yet it may be tryed at another day, and therefore the parties must attend all the Assizes at their perill without further Notice.*

If Notice for a tryal be given to the Defendant himself, or to his Attorney, this is a good Notice; but if Notice be given thereof to the Councel of the Defendant, it is not a good Notice. *Hill. 22. Car. B. r. For Councel are not bound to take notice of such a warning for a tryal, nor to give the Client Notice thereof, and it may be though one have been formerly of Councel with the Defendant in other business, or in*

the

the cause to be tryed, yet he may not be of Counsel in the tryal.

The Plaintiff and Defendant are both bound to take Notice of such Rules of the Court as do concern the proceedings of their cause, at their own perills. *Hil. 22. Car. B. r. For if they know them not, yet they may inform themselves by their Counsel and Attorneys. But this is onely to be understood of the general Rules and not of particular rules made upon the motion of either party, for of such rules there ought to be notice given to the party concerned. Pasc. 24. Car. B. r.*

When Counsel are to argue a matter in Law in Court, the Judges ought to have Notice thereof given unto them before the day, except it be where the Court have appointed a set day for it, or if there be not such Notice given, then the cause is to be put in the paper of causes, that it may come on in course to be spoken unto. *Pasc. 23. Car. B. r. By putting it in the paper, the Judges have Notice, for they have a paper of the causes to be spoken to in matter of Law the day before they be spoken to by the Officer of the Court.*

The Officers in Court ought to take Notice of the proceedings of the causes depending in Court. *Pasc. 23. Car. B. r. For, for that cause do they sit in Court.*

If the Plaintiff or his Atturney do give Notice unto the Sollicitor of the Defendant, that he intends to try his cause at such a time, this is a good Notice of the tryal, although it be not given unto the Defendant nor his Atturney. *Pasc. 23. Car. B. r. For it is the duty of the Sollicitor to inform his Clyent of it, and if he do it not, it shall be accounted the folly of the*

Client, to entertain a Sollicitor that is so careless in his business, and in this case there is no default in the Plaintiff.

The Defendant ought to have eight dayes Notice of the tryal of the Plaintiffs cause before it be tryed, if he live twenty or thirty miles off from the place where the cause is to be tryed; but if he live further off, he ought to have fourteen dayes Notice before the tryal. *Trin. 23. Car. B. r. That the Defendant may have convenient time for his journey, and to prepare his Counsel and witnesses for his tryal.*

The Plaintiff may if he please give the Defendant Notice when he intends to try his cause the same day that he hath joyned Issue with the Defendant in the cause to be tryed betwixt them. *Trin. 23. Car. B. r.*

If one be bound by the rule of the Court, to give unto another personal Notice of a thing, it is not sufficient that Notice be left at the dwelling house of the party. *Mich. 23. Car. B. r. For personal Notice is Notice given to the person of the party himself, and not to another.*

It is not necessary for the Plaintiff to give new Notice of the tryal of his cause where a *retraxit* is entred; for this is but a forbearance to try his cause *hac vice*, and he may afterwards proceed notwithstanding the *retraxit* was entred. *Mich. 23. Car. B. r. The entring of a* retraxit *is when the Plaintiff after he hath entred his cause to be tryed, and hath put in his Record, doth make an entry in the Judges book, that he hath withdrawn his record, and intends not then to proceed to his tryal.*

It is sufficient upon an Action of Trespass and Ejectment brought to try the title of Land, if the

Tenant

Tenant in poſſeſſion of the Land, have Notice of the Leaſe of Ejectment, although he be but an under Tenant of the Land, and although no notice thereof is given to the upper Tenant or to the owner of the Land whoſe title is concerned. *Hill. 23. Car. B. r. & Paſc. 24. Car. B. r. For the poſſeſſion of the Land is only recoverable in this Action, and that doth chiefely concern the Tenant in poſſeſſion of it.*

A Clerk of Commiſſioners of Sewers is ſuch a Clerk as the Law takes Notice of. *Hill. 23. Car. B. r. For he is an Officer appointed by Act of Parliament.* Q.

If the Panel of the Jury Impanelled to try a cauſe, be returned, and be afterward altered or changed before the tryal, the other party ought to have Notice of it, otherwiſe it is a ſurprizal of the party. *Paſc. 24. Car. B. r.*

If the Plaintiff give Notice to the Defendant for a tryal, and there is no Jury returned to try the cauſe, ſo that the cauſe cannot be tryed at the day appointed, if the Plaintiff will afterwards try his cauſe, he muſt give the Defendant new Notice of this tryal. *Paſc. 24. Car. B. r. Elſe the Defendant cannot be able to know againſt what time he muſt attend to make his defence.*

If the Plaintiff give but eight dayes Notice of a tryal unto the Defendant, where by the rules of the Court he ought to have given him fourteen dayes Notice thereof, yet he may enlarge the eight dayes unto fourteen dayes after the Notice of eight dayes given. By *Hodſden* Secondary, *Trin. 24. Car. B. r.*

By the courſe of the Court, the Defendant ought to have convenient Notice of the executing of a Writ

of Enquiry of Dammages, before it be executed, as well upon a demurrer as a Verdict. *Trin. 24. Car. B. r. That he may prepare to give evidence to the Jury that are to inquire of the dammages, for the mitigation of them.*

This Court is not bound to take notice of orders made, and of things which are done at the Assizes, although it be by a Judge of this Court. *Mich. 24. Car. B. r. For the Justices of Assize, &c. do Act by special Commissions, and not as Judges of the Common Law of any of the Courts at* Westminister.

When either the Plaintiff or Defendant doth intend to move the Court in any matter which may prove disputable, the party that thus intends to move, ought to give Notice to the other party, that he doth intend to move the Court in it, and to express for what he will move, and when. *Mich. 1650. B. S. That he against whom the motion is to be made, may not be surprized, but may have time to provide, and may attend the Court to defend himself and answer the motion.*

If the Plaintiff doth tell the Defendant that he will try his cause the first sitting in the next Term, this is a good Notice given of the tryal, although he do not expresely say upon what day of the moneth or week it is. *Mich. 1649. B. S. For the Defendant may inform himself of the precise day when that sitting will be, although the Plaintiff do not express it, and it may be he did not know it himself.*

In the Common Pleas in an Action of Trespass and Ejectment, if there be not Notice given to the Tenant in possession of the Land in question, who is the Ejector in the Action, they will not suffer the Plaintiff to proceed to a tryal upon such a Lease. *Mich. 1649.*

1649. *B. S. This I conceive is for the better recovering of Costs, in case the Plaintiff be non-suit.*

If the Plaintiff do give unto the Defendant Notice for a Tryal, before Issue is joyned in the Cause, this is no good Notice. *Hill.* 1649. 5. *Feb. B. S. For before Issue joyned, there is nothing to be tried, and so this is a vain Notice, and to no purpose, and it may be there will never be any Issue or Tryal, and so the party, if he should attend upon such Notice, might lose his pains and costs.*

If the Plaintiff carry down his Cause to be tried at the Assizes, and it be not then tried for want of time, and doth bring it down again at the next Assizes to try it, he is not bound to give the Defendant new Notice of this Tryal; but if he do not bring it down to be tried at the next Assizes, and yet will try it at another Assizes after that, he must give the Defendant new Notice before he try it. *Pasc.* 1650. 6. *Maii. B. S. For the Defendant may doubt whether he will try it or no, having desisted so long from trying it, and so might be surprized, if he should not have new Notice of the Tryal.*

The party that intends to move the Court in a questionable matter, ought to give Notice thereof to the party against whom he intends to move, or to his Attorney or Sollicitor, and not to his Councel, for such Notice is not good. 1650. 3. *Julij.* 1650. *B. S. For the Councel is not concerned to take notice of anything, but from his Client.*

It is a sufficient Notice for the Plaintiffs Attorney to tell the Defendants Attorney that he hath put in a Declaration into the Office against his Client, and he is not bound to give him a Copy of it. 13. *Nov.* 1650. *B. S. For there he may take a Copy of it,*

but usually they do deliver Copies to one another of the Declarations and Pleadings in their Clyents Causes.

If the Assizes that are to be held for that County where an Issue is to be tried do fall out to be fourteen dayes after the end of that Term, wherein the Issue was joyned, It is not necessary to give fourteen dayes Notice before the Trial that the Plaintiff will try his Cause at that Assizes, although the Defendant do dwell above fourty miles from the place where the Assizes are to be held. 22. *April.* 1650. *B. S. For the Defendant knows the Tryal by the usual course, is to be at that Assizes, and must attend there at his peril.*

If one be bound by an *Assumpsit* to do a thing to another, he to whom the promise is made must give him Notice when he will have him do it, but if he promise that another person shall do it to him, there he to whom the thing is to be done, is not bound to give Notice to that other person when he will have it done. 13. *May.* 1651. *Pase. B.r. For it may be he may not know that other person, and there is no privity of Contract betwixt them two, as there is betwixt the other two.*

After a *ne recipiatur* is entred into the Judges Book, so that the Cause cannot be tried at that time, if the Plaintiff will try his Cause afterwards at another time, according to fair practice, he ought to give the Defendant new Notice before his Tryal; but in strictness of practice, he is not bound to give new Notice of it, for the first Notice is to serve for all that Term, and a *ne recipiatur* serves only to hinder the Tryal for that day, whereon it was set down in the Judges Book to be tried. *Trin.* 1651. *B. S.*

The

This is to be understood of Causes that are to be tried by the Judges every Term, and some dayes after the Term in London *and* Middlesex, *and not of Causes to be tried at the Assizes.*

One is not bound to give Notice to another of a Rule of Court made against him, except part of the Rule be, that Notice shall be given unto him of the Rule. *Trin.* 1651. *B. S. For it is intended that his Attorney was in Court when it was made, and that he did take notice of it, or else that there needs no Notice in the Case, because, that the party ought to have done that which he is ordered to do, without a special Rule made in the Case.*

If a Cause be ready for Tryal, and Notice is thereupon given of the Trial, and afterwards the Cause is put to a reference, and doth depend two or three Terms under reference, and being not determined, the Plaintiff intends to proceed to a Trial, there he must give the Defendant new Notice; but if such Trial be to be the next Term after the reference, it is not necessary to give new Notice of it, for it may be tried by proviso. *Trin.* 1652. *B. S.*

If one give Notice of a Trial to the Defendant, and yet doth not try his Cause at the day appointed, but do defer his Trial for longer time than one Term after, If after that he will try it, he must give a whole Terms Notice before his Trial; but if he try it the next Term after, there needs no new notice; For if the Plaintiff try it not, than the Defendant may try it by proviso. *Trin.* 1652. *B. S.*

If an Action be laid in *London*, and the Defendant do live fifty miles off, the Plaintiff by the Rules of the Court ought to give the Defendant fourteen dayes

dayes Notice of the Trial before he proceed to it. By Rolle *Chief Justice. In regard of the distance of place, it is fit he should have time for his travel, and to prepare for his Defence.*

If the Defendant will try the Cause by proviso, he ought to give the Plaintiff due Notice that he will try it, and may not take advantage of the Notice formerly given by the Plaintiff. 1654. *B. S. Because it lies in the Election of the Defendant, either to try the Cause by proviso, or not to try it: And the Plaintiff cannot presume he will try it, being Defendant in the Action, except the Defendant give him Notice that he will try it.*

If one give Notice to another, that he will move the Court in one thing, and tell him in what; and at the time he moves the Court in another matter, and not in that whereof he gave Notice that he would move the Court in, This is not good Notice of the motion, but the Court will give the partie further time to answer the motion. *By* Rolle *Chief Justice. For by such deceitfull Notice the party concerned cannot prepare to answer the motion.*

Notice given to the party concerned by the Councel in the cause, that he intends to move the Court against him at such a time, is not to be taken by the Court for good Notice, upon the bare averment of the Councel at the Barre, that he gave such Notice; but if the Councel will make *Affidavit* in writing, that he gave such Notice, the Court will allow it.

This Court is not bound *ex officio* to take notice of private Orders made by the Councel of State. *By* Rolle *Chief Justice. For they are matters but of particular concernment, and not matters of Law or publique businesse, whereof as Judges they are to take Notice.*

Notice

Notice given in the night of a robbery by the party robbed, with an intent that Hue and Cry should be made after the Fellons, is good Notice according to the Statute, if it be given in convenient time after the robbery was done. *By* Rolle *Chief Justice.*

It is not necessary to give Notice of a robbery to the Vill that is next within the Hundred, where the robbery was done, and unto that place where it was done: For if the next Vill be out of the Hundred, yet Notice given there is good Notice, according to the Statute of *Winchester.*

Non omittas.

If the Bailiff of a Liberty do not return a Warrant (made upon a Latitat out of this Court, to arrest one within the Liberty) directed unto him, the party that is prejudiced by his not making a return of it, may by the course of this Court have a Writ called a *Non omittas* directed to the Sheriff of the County, in which the Liberty lies, commanding him to enter into the Liberty, and to make Execution of the Writ, *viz.* the Latitat. 21. *Car. B. r. For Liberties must not be priviledged to hinder or delay the Execution of Justice; and if they or their Ministers do neglect their duties herein, this Court may intermeddle, notwithstanding their priviledges, to put the process of this Court in Execution, that the Law may receive no obstruction by them.*

Negative

Negative preignans.

A *Negative preignans* is, when two matters are put in Issue in one plea. *Hil.* 23. *Car. B. r. And this makes the plea to be naught, because the Plaintiff cannot tell in which of these matters to joyn Issue with the Defendant, for the incertainty upon which of the matters the Plaintiff doth insist upon.*

Oath.

OFficers of Justice are by the Common Law bound to take an Oath for their due Execution of Justice, and if they refuse to take such an Oath, they may be imprisoned for refusing to take it. *Trin.* 22. *Car. B. r. So carefull is the Law to have Justice done to all parties.*

One that is to testifie on the behalf of the King upon an arraignment of a Felon, cannot be examined upon his Oath for the prisoner against the King, but he may be examined without giving him his Oath. *Mich.* 22. *Car. B. r. He is suffered to give his testimony for the prisoner against the King, and without his Oath in favour of life.*

The Court will rather believe the Oath of the Plaintiff, than the Oath of the Defendant, if there be Oath against Oath; because it is supposed that the Plaintiff hath wrong done him, and that the Defendant is the wrong doer, and may therefore be rather supposed to swear falsly to protect himself from the Law, than the Plaintiff that is forced to flie to the Law to obtain his right. *Pasc.* 23. *Car. B. r.*

One

One that is to be a Witneſs in a Cauſe, may have two Oaths given him, one to ſpeak the truth to ſuch things as the Court ſhall ask him concerning himſelf, and the other to give teſtimony in the Cauſe, in which he is produced as a Witneſs. The former is called an Oath upon a *Voyre dire*. Paſc. 23. Car. B. r.

Obligation.

One ought not to be admitted to be a Witneſs to prove an Obligation or other Deed, which he takes in the name of another. 21. *Car. B. r. For if he might be ſo admitted, this would be upon the matter to ſuffer him to be a Witneſs to prove a Bond or Deed made to himſelf, which is not reaſonable.*

If a Sheriff take a Bond of the Defendant for his apparance to the Action, upon which he is arreſted by the Sheriff at the Plaintiffs ſute, and the Defendant doth not appear accordingly, and according to the Condition of the Bond, the Plaintiff may by the leave of the Sheriff ſue this Bond in the Sheriffs name, and proceed to Judgement upon it againſt the Defendant; but without his leave it cannot be done, but it is at the election of the Plaintiff to ſue this Bond or not, for he may proceed if he pleaſe by amercements upon the Sheriff, untill he make a return of the Writ directed unto him. *Hil. 22. Car. B. r. For the Bond is only to ſave the Sheriff harmleſs againſt what may befall him, if the Defendant do not appear, and doth no way concern the Plaintiff, but by agreement made afterwards betwixt the Plaintiff and him, of which the Court doth not take notice, except they be moved in it.*

An Obligation cannot be delivered as an eſcroe unto

unto the Obligee himself, but it may be delivered to another to the use of the Obligee, as an escrow. *Trin. 24. Car. B. r. For the very delivery of it to the Obligee himself, and his receiving it makes it work as a Deed in the very instant of the delivery of it, according to the effect of the Deed; but being delivered to another to the use of the Obligee, it cannot operate so, because he is no party to the Deed, nor can take any thing by it, and doth but only take it, as an escrow, and as an instrument to deliver it to the Obligee at such time, and in such manner as the Obligor shall direct, and if he deliver it otherwise, the Obligor may plead* non est factum, *if he be sued upon it by the Obligee.*

If one be bound unto *J. S.* in an Obligation of twenty pound to be paid unto *J. D.* this Obligation is not good. *Trin. 24 Car. B. r. For to* J. S. *it cannot be good, for the Obligor is not bound to pay him the twenty pound in which he is bound, for the* solvendum *is to* J. D. *and to* J. D. *it cannot be good, for if he pay him not the twenty pound, he cannot sue for it: For the Obligor is not bound unto him by the Obligation, and so the Obligation is void to all intents.*

If money be not paid according to the Condition of an Obligation, the Obligation doth thereby become a single Obligation, that is, it shall be taken as an Obligation without a Condition, for the benefit of the Condition, which the Obligor might have taken advantage of by the payment of the money according to the Condition, is lost by the not paying of it, and so the Obligation rests in force, as if it had no Condition. *Mich. 24. Car. B. r.*

An Obligation is a good Obligation, although it do want a date. *Hil. 1649. B. S. 8. Feb. For the*

date

date is not of the essence of the Deed, but the sealing and delivery of it: For if the sealing and delivery of it be proved, although the time precisely of the doing it cannot be proved, yet it is a good Deed.

Orders.

This Court may quash any Orders made at any publick or private Sessions of the Peace, or made by any other Commissioners, if they see good cause for it. *Mich. 22. Car. B. r. For this Court is the superintendent Court over all other Courts, and is to regulate their proceedings, where they be irregular and illegal.*

If a Cause be put in the paper of Causes, that it may be spoken unto in matter of Law by the Order of the Court, and the Attorney in the Cause doth not attend the Cause at the day, the Cause is to be put out of the paper, and not to be put in again that Term. *Mich. 22. Car. B. r. Except very good cause be shewed to the contrary.*

This Court doth not take notice of Orders made in Chancery. *Trin. 23. Car. B. r. Nor in any other Court, as to be bound by them, but will proceed according to the Rules and Orders of this Court.*

By the Orders of this Court (the three last dayes of the Term) the Judges have no paper of Causes, either of *Records* or *Consilium* delivered unto them, for those three dayes are to hear motions. *Trin. 23. Car. B. r. That is, the three last dayes of* Hillary *Term, and* Trinity *Term, which are Issue Terms: for the two last dayes of* Michaelmas *Term, and of* Easter *Term only, are for motions.*

Tuesdayes,

Tuesdayes, Thursdayes and Saturdayes are the proper dayes by the Orders of this Court, to hear matters of Law. *Mich.* 1649. *B.* 8. *But chiefly Saturday.*

Outlawry.

The Court will not reverse an Outlawry, although both the parties consent to it, *viz.* the party outlawed, and the party at whose sute he is outlawed, except there be errour assigned in the Outlawry. *Mich.* 22. *Car. B. r. For matters of Record are not to be destroyed without sufficient cause, and the Outlawry also doth concern the King as well as the Parties.*

An Outlawry which is grounded upon an Endictment grounded upon the Statute against forcible entries, preferred against divers persons, may be reversed as to some of the parties endicted, and yet may stand good, as to others that are outlawed upon the same endictment. *Hil.* 22. *Car. B. r. For the Outlawries against them are several and not entire, and the proceedings to the Outlawry may be good as to the Outlawing of some of them, and the proceedings to the Outlawry as to others, may not be good.*

An Outlawry that doth not express that the party outlawed was proclaimed, as he ought to be, is not good, but may be reversed. *Trin.* 23. *Car. B. r.*

If the Defendant do not appear upon the *quinto exactus* made by the Sheriff of the County at his County-Court, in the County where the Defendant doth dwell, then he is outlawed by the Coroner. *Pase.* 1650, 22. *Maij. B. S. For the Coroner is the chief Officer in criminal matters in the County.*

Offices

Office and Officer.

The chief Cryer of this Court hath his Office by Patent from the King; and this Office may be granted in reversion. *Pasc.* 23. *Car. B. r. For the Court is the Kings own proper Court, where himself used to sit in person, and it is for his honour to have such Officers by Patent, who are upon the matter to attend his own Person, and not to leave them to be disposed of by others; and it may be granted in reversion, because it is but a ministerial place.*

The Office of Assurance cannot assure the life of one that hath an Office for his life, as it may do the life of one that is at Sea, or beyond Seas, and imployed in Merchants affairs. *Mich.* 1649. *B. S. For they have no power to assure the life of any, but in case of Merchants affairs, by the Statute which gave them their power, which is the Statute of* 43. Eliz.

Oyer of a Deed, &c.

If one be sued upon an Obligation, he may pray *Oyer* of the Obligation, and before he hath *Oyer* of it, he is not bound to plead to the Plaintiffs Declaration; yet he may plead without *Oyer* of it, if he please: But if he do plead without *Oyer* of it, he cannot after his pleading wave his plea, and demand *Oyer* of it. 18. *April.* 1650. *B. r. To demand* Oyer *of the Obligation, is not only for the Defendants Attorney to desire the Plaintiffs Attorney to reade the Obligation unto him, as the Word* Oyer *seems only to import, or to have a sight of it, but that he may have a Copy of it, that his Clyent may consider by it what to plead to the Action.*

Plaint.

THe Plaint is the Cause which the Plaintiff doth expres in the Writ, for which he doth complain to the King, and for remedy whereof he desires and obtains the Kings Writ. 21. *Car. B. r. And in his Declaration the Plaintiff doth more at large expres the same matter unto the Court, Where he brings his Action.*

A Plaint in an inferiour Court is in the nature of an original Writ. *Pase. 24. Car. B. r. For upon the entring of it the proces of the Court doth issue forth to bring in the Defendant to appear, and to plead to the Plaintiffs Action.*

Priviledge.

One that is a Committee-man of a Committee of Parliament, if he be not a Member of the House of Parliament, is not thereby priviledged from serving upon the grand Enqueks, which are returned every Term in this Court, to take presentments of misdemeanours done within the County of *Middlesex.* Hill. 21. Car. B. r.

A Clark of this Court is not bound to lay any personal Action which he brings against another out of the County where this Court doth sit. *Mich. 22. Car. B. r. But by his priviledge he may lay it here, notwithstanding the Cause of his Action did arise in another County; and he is thus priviledged in regard of the constant attendance he is tied to give in this Court; yet in reall Actions he is not thus priviledged: For such Actions are local, and must be tried in the County where the Cause of Action did arise.*

A

A Peer of the Realm cannot claim his Priviledge of Peerage in an endictment preferred againſt him. *Mich.22.Car.B.r. Becauſe an endictment is preferred in the Name of the King, againſt whom the plea of Priviledge, is not to be allowed, but is only to be allowed in civil Cauſes, and not criminal.*

One that hath a Sute depending in this Court is priviledged by the Court from areſting, in coming hither from his houſe or lodging to follow his Cauſe, and alſo in departing from the Court back again, directly to his houſe or lodging; and if he be areſted in ſo doing, the Court upon a motion made to inform them of it, will ſet the party at liberty, and puniſh him that arreſted him, if he did know he had a Sute depending here, and came hither to attend it.

The wife of an Attorney of this Court, if ſhe be areſted, ought not to claim the priviledge of this Court, not to put in bail to the Action, as her huſband may, if he be areſted; but her husband muſt put in bail for her, and for wane thereof ſhe is to be committed to priſon. *Trin. 1650. Jun. 25. B. S. For her huſband is priviledged only in regard of his perſonal attendance upon the Court, and of that tye which the Court hath upon him in regard of his relation to the Court.*

Prohibition.

In a Prohibition prayed to be directed to the Court of Admiralty to ſtay their proceedings, upon a ſuggeſtion that they did hold Plea there, upon a promiſe which was made *infra corpus comitatus*, and ſo not triable there, but at the Common Law; It was ſaid by the Court, that the ſurmiſe muſt be abſolute, that the promiſe was made *infra corpus comi-*

tatus, and not, that if there was any promiſe made, it was made *infra corpus comitatus*, for this is incertain, and upon an uncertain ſurmiſe no prohibition can be granted; for no Iſſue can be taken upon it, though it ſhould be falſe. *Hill.* 21. *Car. B. r.*

This Court may by the Common Law grant a Prohibition to the Court of Admiralty to ſtay their proceedings, if they hold Plea of any matter, which the juriſdiction of their Court doth not extend unto. *Mich.* 22. *Car. B. r.*

A Prohibition doth lie in all Cauſes, wherein a *Habeas Corpus* doth lie. *Mich.* 22. *Car. B. r. For this Court hath power as well to ſee Juſtice done concerning a mans eſtate, as to his perſon.*

Although it be queſtionable, Whether a Prohibition do lie in the Caſe wherein it is moved for; Yet this Court will grant it, ſo that the parties concerned may appear here, and plead, or demur, as they ſhall be adviſed, to the intent the matter may come in queſtion here and be decided, Whether a Prohibition do lie in the Caſe or not? *Mich.* 22. *Car. B. r. And if it ſhall appear to the Court that a Prohibition doth not lie, the Court will then grant a conſultation, whereby the party that was ſtopped in his proceedings by the Prohibition may now proceed in that Court to which the Prohibition was directed.* Mich. 22 Car. B. r.

A Prohibition may be granted to the Prerogative Court, to hinder them from granting Letters of Adminiſtration againſt the Law. *Hill.* 22. *Car. B. r.*

Where there is a Sute depending in the Eccleſiaſtical Court for a perſonal Eſtate, and alſo for Lands, a Prohibition may be granted to ſtop their proceedings there, as to the Lands only, and they may (nevertheleſs)

vertheleſs) proceed there, as to the perſonal Eſtate. *Paſc. 23. Car. B. r. For as to the one they have Juriſdiction, and as to the other they have none.*

If the Common Law and the Spiritual Law do differ in the way of their proceedings, in matter of ſubſtance, and the Eccleſiaſtical Court will proceed according to the courſe of their Law, this Court will grant a Prohibition to ſtop their proceedings. *Paſc. 23. Car. B. r. For in things doubtfull, the Common Law is to be preferred before the Spiritual Law, as being the more general Law, and more tending to the general good of the people, and the publick peace of the Nation.*

If the Court of the Lord Maior of *London* ſhall hold plea of a Cauſe after it is removed into this Court by a Writ of *Certiorari*; This Court may grant a Prohibition to that Court to ſtop their proceedings there. *Trin 25. Car. B. r. For after it is removed they have no further Conuſance of the Cauſe.*

A Prohibition may be granted out of this Court to any other Court that doth proceed in any Cauſe, which doth not lie within their Juriſdiction. *Trin. 23. Car. B. r. For that is to exceed their Authority, which this Court will not ſuffer, but is to keep all other inferior Courts within their own bounds.*

A Prohibition may not be granted to an inferiour Court to ſtop their proceedings in a Cauſe which doth not lie within their juriſdiction to try, after that the Defendant hath allowed the juriſdiction of the Court by pleading to the Action. *Trin 23. Car. B. r. For it is then too late to move for a Prohibition, for he ought before he had pleaded, to have demurred to the Juriſdiction of the Court, and then if they had proceeded, he might have had a Prohibition, or without a*

Demurrer, I conceive he may move for a Prohibition, and have it.

The Defendant in the Court of Admiralty may have a Prohibition to that Court after he hath pleaded there, although he cannot have it to an inferiour Court after he hath pleaded; for an inferiour Court doth not draw the matter in queſtion *ad aliud examen*, but do proceed therein according to the Common Law; But the Court of Admiralty do draw the matter *ad aliud examen*, that is to try it by the Civil Law. *Trin.* 23. *Car. B. r. And therefore this Court will uſe their Authority at any time to ſtay their proceedings in the Admiralty, although the Defendant have by his incautelous pleading allowed their Juriſdiction.*

It is not neceſſary for him that Libels in the Court of Admiralty, to ſhew in his Libel, that the Common Law hath no Juriſdiction of the matter for which he Libels; but he that prayes a Prohibition to the Admiralty in this Court, muſt ſuggeſt ſomething wherein in reſpect of the Cauſe depending there, and for which he prayes the Prohibition, that Court hath no Juriſdiction of the Cauſe. *Hill.* 23. *Car. B. r. For the Admiralty cannot determine, whether the Common Law have Juriſdiction or not, and therefore it would be a vain allegation; but this Court can judge of the Juriſdiction of the Courts of Common Law, and can determine whether other Courts do intrench upon their Juriſdictions, or not.*

If the Court of Admiralty do hold plea of any matter, which is not maritime, although the thing were done upon the Sea, yet this Court will grant a Prohibition to ſtop their proceedings. *Hill.* 23. *Car. B. r.*

B. r. For the Court of Admiralty hath only Juris-diction in maritime Causes, viz. *such as only concern Sea-affairs, and not of all matters done at Sea, as Contracts*, &c. *the Tryal whereof belongs to the Common Law.*

This Court will grant a Prohibition to the Admiralty, if there be cause for it, although that a consultation have been granted in the Court of Common Pleas in the same cause. *Hill.* 23. *Car. B. r.*

This Court ought not to deny the party a Prohibition that doth pray it, if there appear cause for a Prohibition; for it is not a thing arbitrary, or *ex gratia curiæ* to grant it, or not to grant it. *Hill.* 23. *Car. B. r. For to deny it were to deny Justice to the party, in denying him the benefit of the Common Law, which is every free-born Englishmans birth-right.*

A Prohibition may be granted to the Spiritual Court after a sentence given in the Cause in that Court, for which the Prohibition is prayed, if there be cause, but the Court will not do it, untill they have heard Councell speak on both parts to inform their consciences, although before a sentence they use to grant it upon a bare suggestion of the party. *Tuesday* 2. *July.* 1650. *B. S.* and *Pasc.* 1652. *B. S. For a sentence in an Ecclesiastical Court is in the nature of a Judgement given at the Common Law, and presumed to be given upon mature deliberation, and therefore this Court will not, but by good advice, make a sentence there given void, or hinder the execution of it.*

A Prohibition doth not lie to the Court of Admiralty in the cases of Felony; yet if there be cause,

this Court will grant a *Certiorari* to remove the Cause hither. *By* Rolle *Chief Justice in* Dothicks *Case.* 29 *Oct.* 1650. *B. S. Q. Tamen quia curia advisare vult.*

Pleas and Pleadings.

If an Action be grounded upon a Statute, there the Statute must be precisely set forth in pleading; but if a Statute recited be but an inducement to the action, there it is not necessary to recite the Statute precisely. *Hill.* 21. *Car. B. r. For if the Statute be not precisely recited, the Defendant cannot tell how to plead to the Statute.*

As a plea in bar may go *per partes*, so may in like manner a plea pleaded in abatement of a Writ. *Hil.* 21. *Car. B. r. A Plea is then said to go* per partes, *as I conceive, when one part of it goes to one part of the Declaration, and another part of the Plea answers another part of the Declaration.*

One that appears in Court upon a *Habeas Corpus*, ought to plead the same Term, wherein he comes in. *Hill* 21. *Car. B. r.*

If the Defendant do not plead according to the Rules of the Court, so that the Plaintiff may enter Judgement upon a *Nihil dicit*, yet if after the Rules are out the Defendant do put in his Plea into the Office before the Plaintiff hath entred his Judgement, this Plea is to be accepted, and the Plaintiff ought not then to enter his Judgement, and therefore it behoves Attorneys to be vigilant in their practice. 21. *Car. B. r.* and 23. *Car. Hill. For a Judgement upon a* Nihil dicit *is for want of a Plea; but in this Case here is a Plea, and if such a Judgement should be entred, it would be* in facto, *an irregular Judgement.*

If

If the Defendant in an *Ejectione firmæ* do not plead in time, according to the Rules of the Court, the Plaintiff may after the Rules for pleading be out, move the Court to ſet a ſhort day for him to plead, which will be granted, if the Land lie neer at hand, and if the Defendant do not plead at the time ſet by the Court, the Plaintiff may enter Judgement upon a *Nihil dicit*, 21. Car. B. r. *But now ſuch motions are not uſual, for Judgement may be entred of courſe.*

A forraign Plea is to be put in upon Oath of the Defendant, that is, he muſt ſwear his Plea is true, or elſe ſuch a Plea is not to be received. *Mich.* 22. *Car. B. r. Mich.* 24. *Car. B. r.*

A forraign Plea is when the Defendant doth plead ſuch matter, that if it be true, the cauſe cannot be tried in this Court; and in regard that thereby the Defendant doth endeavour to hinder the proceedings of this Court, and to delay the Plaintiff, therefore the Court will make him ſwear his Plea to be true, that the Court may not be deluded, nor the Plaintiff trifled with by a falſe Plea, and if he will not ſwear his Plea to be true, the Plaintiff may enter Judgement for want of a Plea. *Trin.* 1650. *B. S.*

If an Action of Debt be brought upon an erroneous Judgement, the Defendant may plead, *Null tyel Record*, that is, that there is no ſuch Record, as he frames his Action upon. *Mich.* 22. *Car. B. r. For that which is erroneous is accompted in Law, as null and void.*

If the Defendant do plead a dilatory Plea, the Court at the Plaintiffs motion will order him to plead ſuch a Plea, as he will ſtand to. *Mich.* 22. *Car.*

B. r.

B. r. For the Law favours not delayes, whatsoever is vainly babled by the ignorant to the contrary. And if he be ordered to put in a Plea, to which he will stand, and he do it accordingly, if such his Plea be not good, the Court will not permit him to amend it, but the Plaintiff shall take advantage of it by demurring upon it, or otherwise as he shall be advised.

In any Action wherein the Plaintiff, in case he recover, shall only recover Dammages, the Defendant may plead in Barre to this Action an arbitrement with satisfaction thereupon made unto the Plaintiff. *Mich. 22. Car. B. r. For if the Plaintiff have satisfaction, the Law will not intend that he is damnified, and so he hath no Cause of Action.*

When the Court doth order one to plead presently, it is to be understood that he shall plead in such convenient time after, as the Court shall judge reasonable. *Mich. 22. Car. B. r.*

The Defendant may amend his Plea, although it be three Terms after it was pleaded, if he will pay Costs. *Mich. 22. Car. B. r. But it must be by leave of the Court, because it is against the common Rules of practice.*

Although a Plea do contain divers matters in it, upon which an Issue may be taken, yet this Plea is not double, if the Plea could not have been good, without alleadging all those matters in it. *Mich. 22. Car. B. r. For though the Law doth not allow captious Pleas, yet it doth not deny the Defendant to plead all such matters that his Case affords for his just Defence.*

If

If the Defendant Plead an insufficient Plea, and there is a good Issue joyned upon that Plea, and a Verdict given upon that Issue for the Defendant; the Plaintiff shall not afterwards take advantage of the insufficiency of the Plea. *Mich.* 22. *Car. B.r. For it was his own fault to joyn Issue upon it when he might have demurred upon it.*

Where one Pleads Letters of Administration, which are granted by such an ordinary, whereof the Law doth take notice, he may Plead that they were granted unto him *debito more*; but if they be granted by an inferior ordinary, of whom the Law doth not take notice of, he must Plead that they were granted unto him *per ordinarum illius loci.* Mich. 22. Car. B.r. *That the Court may the better Judge whether they be well granted in regard of the power of the ordinary that granted them or not.*

If the Plaintiff do alter his Declaration after the Defendant hath Pleaded to it; the Defendant may alter his Plea. *Mich.* 22. *Car. B.r. For by the amendment of it, it may be so altered in matter that it may require a different answer from what was formerly Pleaded, and in that case if he should not amend his Plea, he might be triced for want of a good Plea.*

In an Appeal brought, all the Pleadings ought to be in *French. Mich.* 22. *Car. B.r. Because the Statute which enacted that all Pleadings should be in Latin, extends not to this Action, and so the Pleadings therein are to be in* French, *as all Pleadings were before that Statute. But now by the late Act they are to be in* English. Q. Tamen, *Whether that Act do extend to this Action, or onely to such Pleas as were formerly in Latin.*

When the Court doth order that the Defendant shall

shall Plead, it is intended that he must Plead an Issuable Plea. *Mich. 22. Car. B. r. For the rule is made to quicken the Defendant, that the Plaintiff be not delayed by his Dilatorines's, and if he might Plead a Dilatory Plea, and not issueable, the rule would be to no purpose.*

The Court will not upon a motion, rule the Defendant to Plead peremptorily by a day, before the common rules of the Court for Pleading be out, but then they will. *Mich. 22 Car. B. r. For till then it cannot be said that the Defendant hath delayed the Plaintiff.*

If a *Scire facias* upon a Recognizance, be brought against an Infant, he cannot Plead Infancy or nonage to it; but he must bring his *audita querela*, and set forth his case therein, and thereby his age shall be tryed by the Courts inspecting of him, and not by a Jury. *Hill. 22. Car. B. r.*

If the Plaintiff do release his cause of Action to the Defendant, yet the Court will not upon a motion stop the Plaintiffs proceedings in the Action, but the Defendant must Plead this release. *Hill. 22. Car. B. r. In bar of the Action, for the Court cannot take notice of the release upon a motion.*

It is not a good Plea, to Plead a Paroll agreement in bar of an agreement made by indenture between the parties. *Hill. 22 Car. B. r. For an agreement by Indenture is a more solemn agreement, and of a higher nature then a Paroll agreement, and must be discharged by some act of as high a nature as it is.*

A double Plea is such a Plea, that one Issue cannot determine all the matter issuable that is contained in it, and also where the Defendant is put to a double answer. *Hill. 22. Car. B. r. And such a Plea is not a good Plea.*

If

If the Defendant do Plead a frivolous Plea, to the intent to delay the Plaintiff, and to hinder him from going to a tryal, the Court will upon the Plaintiffs motion, order the Defendant to plead such a Plea as he will stand to, or else to accept of a Demurrer from the Plaintiff unto his frivolous Plea. *Hill. 22 Car. B.r. For it is the Justice of the Court to speed the proceedings in Law, and to bring suits to determination as soon as with conveniency and Justice to all parties, it may be done.*

By the course of practice in the Court of Common Pleas, the principle in a Bond may Plead for his Suerty without his leave or knowledge, and acknowledge a Judgement upon the Bond, but this Court doth judge it hard practice, and will not allow it to be don here. *Pasc. 23. Car. B.r. Now it is said they do not allow it there. The practice seemed hard in this respect, that the Suerty, who intended onely to be bound that the principal should pay the Debt, should by the falsity of the principal, be presently liable to an Execution for the Debt, and be enforced to pay it.*

Where the Defendant may plead the general Issue, he ought so to Plead, that the whole matter in question may come to be tryed. *Pasc. 23. Car. B.r. For else the Plea is not good, because it tenders not such an Issue whereupon the cause depending may be determined, which every Plea ought to do, for to Plead otherwayes, is to no purpose.*

If one bring an Action upon a contract, it is a good Plea in bar for the Defendant to Plead, *quod exoneravit se de Contractu.* Pasc. 23. Car. B. r. *For it sounds all one, as if he had Pleaded that he hath performed the agreement.*

A Concord by Paroll is no good Plea in bar to an Action

Action brought upon a ſingle Bill which is not penall. *Paſc.* 23. *Car. B. r. For bare Words are not of ſo great force as agreements put in Writting.*

Every Plea muſt be Pleaded either in bar to the Action brought, or in abatement of the Writ upon which the Action is framed, otherwiſe it is but a diſcourſe and not a Plea, becauſe the Plaintiff cannot take an Iſſue upon it, and therefore if the Plaintiff do demur upon it, and his demurrer be adjudged good, he ſhall have Judgement againſt the Defendant. *Paſc.* 23. *Car. B. r.*

Anciently all Pleadings were in *French*, then by the Statute it was Enacted they ſhould be in Latin. *Paſc.* 23. *Car. B. r. Now by a late Act they muſt be in* Engliſh *and not written in Court-hand.*

The Plaintiffs Atturney is not bound to receive a Plea for the Defendant from any perſon that is not an Atturney. *Paſc.* 23. *Car. B. r.* Q. *Whether he ought not to receive it from the Defendant himſelf, if he tender it to him.*

If the Plaintiff do put in a Replication to the Defendants Plea, the Defendant ought to Plead unto it, although it did not come in, in due time, according to the courſe of the Court. *Paſc.* 23. *Car. B. r.*

The Court will not direct any perſon how to plead, although the matter be difficult, though they be moved to do it, but will bid them Plead at their own perils. *Paſc.* 23. *Car. B. r. For Councel are to adviſe how to Plead, and the Court is onely to Judge of the Pleadings, whether they be good in Law or not.*

A thing ought not to be Pleaded by implication, but in expreſs words. *Trin.* 23. *Car. B. r. For there can be no Iſſue taken upon it, becauſe it is not a direct affirmative, but by ſuppoſition.*

If

If one Plead a Deed, he muſt produce it in Court, but one may give a Deed in evidence, although he cannot produce it, if he can make it out by proofs that there was ſuch a Deed, and ſo he may do of a Record. *Trin.* 23. *Car. B.r. For upon Pleading of a Deed, it is fit that the Defendant have a ſight of it, that he may know what defence to make, which he cannot (it may be) do without a ſight of it, and every Plea ſhall be taken to be true, except it be denyed, but an evidence is believed or not believed, as the circumſtances of things do weigh with the Jury.*

Where the Defendant is not conſtrained to Plead a ſpecial Plea, he may Plead the general iſſue proper for the Action brought, and give the ſpecial matter in evidence. *Hill.* 23. *Car. B.r. For every Plea muſt be ſo framed that it may give a full anſwer to the matters ſet forth in the Declaration, to wit, all ſuch as are material to be anſwered unto.*

It hath been adjudged a good Plea in a *Scire Facias* brought againſt an Executor upon an Obligation entred into by the Teſtator, to Plead fully Adminiſtred, but it is better for him to Plead that no goods of the Teſtators are come to his hands with which he could ſatisfie the Debt, *viz.* ſince the bringing of the Writ of *Scire facias* againſt him. *Mich.* 22. *Car. B.r.*

One may Plead a matter in Law, although it do amount to no more then a *non culp. Mich.* 23. *Car. B.r. For if the party be not guilty by Law, notwithſtanding that which is alleadged againſt him be true, it is all one as if the matter alleadged againſt him were not true; for no man is further guilty of a thing then the Law makes him guilty.*

If one Plead an ill Plea, and the Plaintiff joyns iſſue upon this Plea, and a Verdict is thereupon found for the

the Plaintiff, the Defendant shall not afterwards take advantage of his own ill Plea to avoid the Plaintiffs Verdict. *Mich. 23. Car. B. r.*

A Plea may be amended upon leave of the Court, if it be but in paper and not entred, but the party that amends it, must pay costs unto the other. *Hil. 23. Car. B. r. For it is not reasonable that the Court should grant him favour to the prejudice of the other party, who by this amendment is put to new trouble and charges.*

A Clerk of the Court ought not to refuse a Plea, although it be not put in in time, but the Plaintiff must move the Court, and abide by their rule therein. *Hil. 23. Car. B. r. For the Court and not the Attorneys are to judge of the legality of the proceedings in all causes depending before them, as well as they are to determine the matters in Law in them.*

One that is Endicted of Felony or Treason, ought not by the Law to be admitted to Plead to the Endictment, untill he hold up his hand at the bar. *Pasc. 24. Car. B. r.* Q. *Whether it is to be done to the end that the Court, Jury, and people, may take the better notice of the prisoner, or for what other reason.*

One cannot Plead his pardon for treason, untill he is charged in Court with the Endictment of it. *Pasc. 24. Car. B. r. For it must appear to the Court what the crime is, before they can judge of the pardon of it.*

If one tender an Issue in abatement of a Writ, and there is a Demurrer to it, if the demurrer be overruled, there must be a *respondes ouster*, for the overruling of the demurrer is not peremptory to the party. *Trin. 24. Car. B. r. For the matter in question is not determined by the demurrer, but only the goodness of the Writ brought.*

That

That Pleading of payment upon an Action brought upon a penal Bill, without shewing an acquittance, is but a Plea in abatement of the Writ, but with an acquittance, it is a Plea in discharge of the Action it self. *Trin. 24. Car. B.r.*

A Dilatory Plea upon a demurrer is not peremptory, but it is otherwayes upon an Issue joyned. *Trin. 24. Car. B.r.*

If one do demur upon such a Plea as ought not to be pleaded, by his demurrer he doth admit the Plea. *Trin 24. Car. B r. For the demurrer is but to try the sufficiency of the Plea.*

One may (sometimes) Plead a Plea which is properly a Plea in bar by way of abatement; and a Plea which is properly a Plea in abatement, by way of a Plea in bar. *Trin. 24. Car. B. r. But this holds not in all cases.*

A Plea in abatement of the Writ, ought not to be received after the Defendant hath Emparled, yet if it be received, and the Plaintiff doth demur to it, the demurrer is good. *Trin. 24. Car. B.r. For the Plaintiffs accepting of the Plea after imparlance, is no prejudice to the Defendant, and therefore it is but reason that he should take advantage of the insufficiency of the Plea, by demurring to it, if he see cause.*

It is intended in Law, that every Plea is entred when it is Pleaded, for anciently the Serjeants at Law did use to Plead all the Pleas in Court at the bar. *Trin. 24. Car. B.r. And before they were entred they could not Plead them.*

If one be sued upon an Obligation, he cannot be compelled to Plead before he have *Oyer* of the condition of the Obligation. *Trin. 24. Car. B. r.*

If there be a Verdict given in a cause wherein no

iſſue was joyned, this is a *Jeofail*, and it is not helped by the Statute; but if there muſt be a repleader. *Paſc. 24. Car. B. r. For there is nothing tryed, and ſo there can be no Verdict.*

Upon over-ruling of a Plea, which is onely in abatement of the Writ, there ſhall be a *reſpondes oſter*, that is, the Defendant ſhall onely be ruled to put in a better Plea; but upon over-ruling of a Plea which is Pleaded in bar of the Action, Judgement ſhall be given againſt the Defendant, for ſuch a Plea is *peremptory. Trin. 24. Car. B. r. But a Plea in abatement is onely dilatory, and is not to bring the matter in queſtion to an Iſſue, but to delay the Plaintiff.*

If a Plea be put into the Office in due time, it is well enough, although it be not delivered to the Atturney of the Plaintiff. *Trin. 24. Car. B. r. So that he may not enter Judgement for want of a Plea.*

In an Action of Debt brought for Rent, upon a Indenture of Demiſe for years, the Defendant may Plead payment without ſhewing the Deeds, for the Leaſe ſhall be intended to be in being at the time of the Action brought. *Trin. 24. Car. B. r*

A colourable Plea ought to be entred, but that which is no Plea ought not to be entred. *Trin. 24. Car. B. r. For a Colourable Plea is a Plea untill it be over-ruled.*

Q. *Whether one may Plead a Leaſe for years by Indenture without ſhewing the Indenture.* Trin. 24. Car. B. r.

In an Action of Debt brought upon an Obligation, the Defendant is not bound to Plead untill he have *Oyer* of the Condition of the Obligation. *Trin.*

24.

24. Car. B. r. *But he may Plead without* Oyer *of it if he please, and if he do Plead without* Oyer *he cannot afterwards have* Oyer *of it.*

If one Plead a Plea that is not good, and the Plaintiff doth demur upon it, he cannot afterwards amend that Plea, without the Plaintiffs consent. *Mich. 24 Car. B. r. For the Defendant shall not take advantage of his own ill Pleading to delay the Plaintiff, and to put him to more trouble then by the Law he may do.*

A Dilatory Plea ought to be Pleaded upon the giving of the first rule in the Office for the Defendant to Plead, and a Plea in the chief must be pleaded after the second Rule given in the Office for the Defendant to Plead; and this is the reason that Judgement cannot be entred against the Defendant for want of a Plea, untill the time given by the two rules to Plead be past. *Mich. 24. Car. B. r.*

The ancient course of practice was for the Defendant to put in his Plea into the Office, before that the Defendants Atturney did deliver it to the Plaintiffs Atturney. *Mich.* 1649. *B. S.*

The Master of the Office of the Upper Bench, ought not to suffer the original Pleas to be delivered out of the Office, but onely Copies of them. *Mich.* 1649. *B. S. For by the Pleadings in the Office, are the Pleadings made up for the Issue to be tryed, and if any question arise about altering of them they are to be examined and rectified if any alteration be by the Pleas in the Office.*

A Plea that is grounded upon a Statute, if it be not good, is not helped after a Verdict. *Mich.* 1649. *B. S. For the Statute being the foundation of the Plea, if it be not well laid, the Plea is naught in the very substance of it, and such Pleas are not helped by the Statute of* Jeofailes.

If an Action be brought in this Court to recover Lands, and the Defendant emparls; yet he may (as it hath been held) Plead that the Lands in question are ancient Demesne, and demand Judgement whether this Court may hold Plea of them, but if he plead to the Defendant, and make a full defence, he cannot after that plead to the jurisdiction of this Court. *Mich.* 1649. *B. S.* 8. *Ap.* 1650. *B. S. Pasc.* Q. *For it hath been doubted and held it could not be after Imparlance.* Pasc. 1650. 4. Maii.

If the Plaintiffs Atturney deliver an imperfect Declaration to the Defendants Atturney, and he accept of it; yet he is not bound to Plead untill the Plaintiff have perfected his Declaration. *Mich.* 1649. *B. S. For untill it be perfected, it is no Declaration.* Q. *Whether he may not demur to it.*

If it be doubtful between the parties, whether a Plea be good or not, it cannot be determined by the Court upon a motion made, that the Court would deliver their opinions whether it be good or not, but there ought to be a Demurrer upon the Plea, and upon hearing of arguments thereupon, the Court is to judge whether that Plea be good or bad. *Hil.* 1649. *B. S. Jan.* 26.

If an indenture be onely Pleaded by way of inducement, it is not necessary to say, *per indenturam suam in curia hic prolat:* but if the party do derive any title unto himself by the indenture Pleaded he must Plead it so. *Hil.* 1649 *B. S. Jan.* 26. *That the Court may judge whether the title he makes by the Indenture, be warranted by it, and that the other party may consider what answer to give unto it.*

If an Action be laid in *London*, and be afterwards removed by a *Habeas Corpus* into this Court, the Defen-

Defendant ought to Plead the same Term, the cause is removed, and proceed to a tryal. *Hill.* 1649. *B. S.* 9. *Feb. For the Court will not grant the party to take any advantage by the removing of the cause hither to delay the other party in the course of his proceedings.*

If an immaterial Issue be joyned, it is not helped by the Statute of *Jeofailes*; but there ought to be a *repleader. Pasc.* 1650. 5. *Mani B. S. vid. Issue.*

A Plea that the Plaintiff hath not taken the Engagement according to the late Act, ought to be Pleaded in this manner, *petit advisamentum curia si volunt procedere quia querens non subscripsit engagemento.* And when the Plaintiff hath subscribed the Engagement, and made it appear to the Court that he hath done it, it shall be entred upon the Roll, *Quod querens subscripsit engagemento*, and then the Plaintiff may proceed. It may also be averred upon the Roll, that the Plaintiff hath not taken the Engagement, although he have Judgement in the cause, and thereby Execution shall be stayed untill he have subscribed it. *Trin.* 1650. *B. S.* 3. *July. Now all this Pleading is out of doors by the taking away the Act made for the subscribing of it by an order of the Protector and his Counsel.*

If the Defendants Plea do not answer all the matter contained in the Plaintiffs Declaration, it is no good Plea; but the Plaintiff shall have his Judgement intire against him for want of a Plea, although the Declaration be nought in some part of it. *Hill.* 1650. *B. S.* 31. *Jan. For although the Defendant was not bound to have Pleaded to the Declaration, but might have Demurred unto it for the insufficiency of it, yet the Defendant not doing it, it shall be intended he had no cause for*

it, and then not Pleading, Judgement may be entred against him.

When a Plea is Pleaded, the Atturney ought to set his hand to the Plea, and then the Issue is joyned, and if he will not set his hand to the Plea, Judgement may be entred for want of a Plea. *Hill.* 1650. *B. S.* 5. *Feb. But if it be a special Plea, there must be a Counsellors hand set unto it.*

If one be sued by original Writ, he must Plead the same Term, in which the original is returned. *Hill.* 1650. *B. S.* 6. *Feb.*

If one be compelled to alleadge double matter in his Plea, yet if he do insist but upon one of them, the Plea is not double. *Trin.* 1651. *B. S. For upon that matter onely upon which it is insisted upon, shall issue be joyned.*

If the Plaintiffs Atturney will consent unto it, the Defendant may waive his Plea without moving the Court. By *Rolle* Chief Justice. *Trin.* 1651. *B. r. But if he will not consent, it cannot be done without moving the Court.*

A special Plea is a Plea, although it have not a Counsellors hand set to it; and therefore Judgement cannot be entred for want of a Plea, although a Counsellors hand be not to it, without acquainting the Secondary of the Office and obtaining his leave to do it, for it may be there was no cause for a special Plea, and the Plaintiff must not be his own Judge. *Mich.* 1651. *B. S. Per Rolle Chief Justice.*

The Prayer of the priviledge of the Court is not properly a Plea, for it was anciently demanded by Writ, although it be now usually allowed upon the Prayer of the party who claimes it. By *Hatch* Apprentice in the Law.

If

If a Declaration be delivered to the Defendants Atturney, or put into the Office after the Essoigne day of the Term, the Defendant cannot be compelled to Plead that Term, but he may Emparle till the next Term. 1652. *B. S. For the Term was begun when the Declaration was delivered, and so it cannot be accounted a Declaration of the preceeding Term.*

Pardon.

He that will take the benefit of a general Pardon, ought to plead the Statute by which the general Pardon was granted. 21. *Car. Br.* 8. *Ed.* 4. 7. 4. *H.* 7. 8. *That the Court may judge whether his offence be Pardoned or not.*

One that is found guilty of man-slaughter, must sue out his Pardon, or else his burning in the hand cannot be dispensed withall, for man-slaughter is Felony. 23. *Car. B. r.*

Penalty.

This Court will not give the Penalty of an Obligation to the Obligee, which was onely made to perform the Covenants of an Indenture. 21. *Car. B. r. Because the party may recover upon the Covenants of the Indenture whatsoever he can be damnified by the breach of them, and the Bond was given for no other intent, but to tye the Obligee to perform the Covenants, or to satisfie for the breach of them, and not that the Obligee should take advantage of the penalty of the bond (which it may be is a great sum) for the breach of a Covenant, whereby the Obligee is very little damnified.*

Perjury.

A false Oath taken before a person that hath not authority by Law to give the party his Oath in that cause wherein he is deposed, is not Perjury. 21. *Car. B. r. For the Oath is* Coram non judice.

An Endictment for Perjury may be preferred against one for taking a false Oath rashly, and for want of consideration; although the party that took the Oath did not do it maliciously, and he may be convicted thereupon; but the fine ought to be more moderate where the Perjury is committed out of rashness onely, then where it is committed maliciously, *Trin. 24. Car. B.r. For though the Law doth not tollerate offences, though they be committed out of infirmity; yet they have regard to the weakness of man, and will not therfore punish them so severely as offences committed upon premeditated malice to the party against whom they are committed.*

Process and Proceedings in Law.

All legal Proceedings ought to take commencement by original Writ or by Endictment, or by information. 21. *Car. B.r. Or by* Latitat, *which is the original Process of this Court, and is in the nature of an original, although it doth suppose a former Writ in the case for which it is issued forth.*

If a *Cepi Corpus* be returned in one Term, the Defendant ought to Plead the next Term after the return, so that the Plaintiff may go a tryal the same Term, and so it is if the Defendant be brought into Court by a *Habeas Corpus*, or an *alias*, or *pluries Habeas Corpus. Mich. 22. Car. B.r.*

After

After the Plaintiff is non-suit, he must begin his Action again, and cannot proceed upon his old Declaration. *Mich. 22. Car. B. r. For by the non suit the cause as to that Action is determined, and the parties have no day in Court.*

After a Verdict, there ought not to a repleader, but the Plea is discontinued. *Mich. 22. Car. B. r.*

Where the Defendant brings a Writ of Error to reverse a Judgement given against him, and hath a *Supersedeas* to stay Execution upon the Judgement directed to the Sheriff of that County where the Execution is to be done; and yet he is taken by the Sheriff by vertue of an Execution taken out upon this Judgement, upon moving of the Court they will grant him a Writ of *Supersedeas* to Supersede this Execution, *quia emanavit erronice. Mich 22. Car. B. r. For such Execution ought not by Law to have issued out, much less to have been executed.*

A Latitat is called a Bill of *Midlesex. Mich. 22. Car. B. r. But not all Latitats, but onely such as are directed to the Sheriffs of* Midlesex, *as I conceive.*

Where the Defendant did tender unto the Plaintiff the moneys for which the Action is afterwards brought against him, before the Action was brought, and the Plaintiff refuseth them, and will (notwithing) sue the Defendant for them upon a motion, and making this appear to the Court, the Court will order the money to be brought into the Court, and will stay the Plaintiffs Proceedings. *Trin. 23. Car. B. r. For the Court will not countenance any one to sue another, who may have right done to him without suit, for this were to encourage men to be vexatious.*

The continuances of Processes in inferior Courts, ought to set forth the manner of the continuances, and

and not to expreſs them generally. *Trin.* 24. *Car. B. r.*

The Proceedings in inferior Courts, are not ſo regular and formal as the Proceedings are in the Courts at *Weſtminſter*, but are entred only in ſhort notes. *Paſc.* 24. *Car. B. r. Paſc.* 1648. *B. S.*

If one be arreſted by Proceſs of this Court, and be thereupon in Cuſtody, and the Plaintiff do not declare againſt him in three Terms after, the Defendant is by the rules of the Court to go out upon common Bail. *Trin.* 24. *Car. B. r. For the Court will preſume the cauſe of Action is not very great, becauſe it is ſo long before he declares, and they will not compel him to put in ſpecial Bail but where it appears the cauſe requires it.*

The continuances in the Proceſs of this Court, are not entred untill the Judgement given in the cauſe proceeded in be entred. *Mich.* 1649. *B. r. For not till then the Record is made perfect.*

An appearance will help a miſcontinuance of Proceſs. 9. *Nov.* 1650. *B. S.*

The bringing of a Writ of Error is a continuance of the Action. 10 *Feb.* 1650. *B. S. Hill. For the Action is not determined by the Judgement, if a Writ of Error be brought, but is ſtill depending for the Judgment (it may be) may be reverſed.*

If a cauſe to be ſpoken to in Court be entred into the paper of cauſes for the day in the Office, although it be not put into the paper of the cauſes of the day delivered to the Judges, yet the Court will proceed in them if they be enformed of it. *Trin.* 1651. *B. S. For it was but a miſtake of the Clerk, and it may be Councel on both ſides are entertained for that day to ſpeak in it.*

Upon

upon a Verdict or a Demurrer (sometimes) the continuances in the cause are not entred, until after Writ of Error be brought. *Pasc.* 1652. *B.S.*

Miscontinuance of Proces is where one Proces is ...d for another Proces, *viz.* a wrong Proces in ...d of a right. *Trin.* 1652. *B.S.*

Proviso.

A Proviso in a Deed which sounds in Covenant, is Collateral. 21. *Car. B.r. That is a Proviso which is ...trued, that it implies a Covenant in it; for there is ...ference betwixt a Proviso, and a Covenant of a Deed ...a Proviso doth often go by way of destruction of the ...le Deed, or some part of it, or of the estate created by ..., but a Covenant always stands with the Deed, ...and only an Action lyes upon the breach of it.*

A tryal by Proviso was ordained by the Statute, to the end that the Defendant might free himself of ...s brought against him, by trying the issue depending betwixt him and the Plaintiff, in case the Plaintiff doth not try it as he ought, which he may do the next Term after the Plaintiff should have tryed it, or at any time after that when he pleaseth. *Hill.* 22. *Car. B.r.*

If a Proviso in a Deed be insisted upon at a tryal to destroy the Deed in which it is, there must be punctuall proof, that the thing provided to be done or not done, was done or was not done according as the Proviso directeth. *Mich.* 1650. *B.S. For the Law doth not favour the destruction of Deeds or estates, but doth favour the supporting and maintenance thereof, as much as may stand with the rules of Justice.*

Pledge.

Pledge.

The Plaintiffs Pledges that he shall prosecute his suite may be entred at any time pending the suit. *Trin.* 22. *Car. B. r. For the putting in of Pledges is now but a meer formal thing, but what was the ancient use of putting them in.* Q

Pardon.

A general Pardon doth discharge not onely the punishment which was to have been inflicted upon the person of him that did commit the offence Pardoned, but also the guilt of the offence it self. *Mich.* 22. *Car B. r.*

A Pardon may dispence with the burning in the hand of a person that is convicted for Felony, but without a Pardon it may not be dispensed with. *Pasc.* 23. *Car. B. r.*

The words *Pardonavit remisit & relaxavit* in a Charter of Pardon granted to one for Felony, do not restore unto him the goods which he forfeited to the King by his Felony, but the word *restituit* in the Pardon, doth restore him to his goods. *Trin.* 23 *Car. B. r. For the former words go but only to the Pardoning of the offence, but the latter to restoring to the estate forfeited by the Felony.*

A Pardon for treason cannot be pleaded untill the prisoner be charged with the Endictment for the offence committed. *Pasc.* 24. *Car. B. r. For before he is charged by the Endictment, it doth not appear to the Court that he is the person that is pardoned by the Pardon.*

If one have a Charter of Pardon for Felony committed by him, the Court ought to allow it upon the

the prayer of the party that hath it, but he must produce it at the Bar, and pray upon his knees that it may be allowed. 13. *Nov.* 1650. *B. S. And so it was then done in one* Goffs *case.*

A general Pardon doth Pardon publicke offences done to the Commonwealth, but it doth not Pardon private injuries done to particular persons. *Pasc.* 1652. *B. S.*

Postea.

The *Postea* is the issue or record engrossed in parchment upon which a tryal is had; and which is afterwards to be entred in the roll of the Court where the Action tryed was brought, when the party enters his Judgement upon the Verdict had at the tryall. *Mich.* 22. *Car. B. r. It is called the* Postea *from the word* Postea, *which begins that which is entred by a Clerk of Assize upon the record that was tryed after the tryal setting forth that* Postea *that is afterwards, after the issue joyned at such a day and place, and before such a Judge, the Plaintiff and Defendant came, &c. to hear Judgement, that is to try the cause and hear the Verdict, and so sets forth the tryal particularly and the Verdict.*

The Court may stay the *Postea*, not suffering the party to enter Judgement upon his Verdict if they find cause to do it. *Mich.* 22. *Car. B. r. viz. For undue proceedings in the tryal.*

The Defendant hath four dayes by the rules of the Court to speak in arrest of Judgement after the *Postea* is brought into the Court, and if the party for whom the Verdict passed, will not bring it in upon notice given to him by the other party, that he intends to move in arrest of Judgement; the Court upon a mo-

motion setting forth this matter, will order Judgment to be stayed, untill four dayes after it shall be brought in.

There is no general rule of Court for the Clerk of the Assize to bring in the *Postea*s into this Court by a percise time, but if he be negligent, and return them not in convenient time, the parties grieved may move the Court, and thereupon the Court will make a rule that he bring them in speedily. *Mich.* 22. *Car. B. r.*

If the Clerk of the Assize have mistaken himself in drawing up of the *Postea*, he may amend it by his notes which he took, and drew it up by; although it be returned. *Trin.* 24. *Car. B. r. But it must be before it be filed, for then it is a record of the Court.*

After the *Postea* is entred upon record, and the record hath been read in Court, in order to the speaking to some matter in Law in it, the Attorney in the cause ought not to have the *Postea* any longer in his custody, but it ought to remain in Court. *Trin.* 24. *Car. B. r.*

The Defendant may give rules in the Office for the Plaintiff to bring in the *Postea*, and if he will not do it, he shall be non-suite. 18. *Nov.* 1650. *B. S. For though he have a Verdict, yet he hath no Judgement, and so his suit is not determined, and the Court will intend that he will proceed no further, and the Defendant is not to be tyed to attend upon his proceedings upon uncertain tyes*

Although the Verdict given be prejudicial to the Plaintiff, as he conceives, yet he ought to bring in the *Postea*. *Pasc.* 1651. *B. S.* 13. *Maii. For he must abide by the tryal, though it may prove prejudicial unto him.*

A

A *Postea* is a record of this Court trusted with the Atturney in the cause by the Clerk of the Assize, and the Atturney is bound, if he be so trusted, to deliver it into the Office, that the Judgement may be entred by it by the Officer of the Court. *Trin.* 1651. *B. S.*

It is not necessary to annex the *Distringas* unto the *Postea*, although it is usual so to do. *Trin.* 1651. *B. S.*

Presumption.

Where the Plaintiff doth declare in an action of Debt for Rent behind, due upon an Indenture of Demise for years, it shall not be Presumed that there is any other Rent due, or Lease made then that upon and for which the Plaintiff doth declare. *Mich.* 22. *Car. B. r. For this would be a foreign construction, and for which there is no inducement.*

Where divers houses are let to one by one Lease, the Court will Presume that the Lessee is in possession of them all, if the contrary doth not appear. *Pasc.* 24. *Car. B. r. For although the Lessee may possibly have passed away his interest in some of them to other persons, yet this not appearing to the Court, they will not presume it to be so.*

One Court of Justice will not Presume that another Court of Justice will do unjustice, except it do plainly appear unto them that it is so. *Pasc.* 24. *Car. B. r. For each Court ought to have an honorable opinion of the proceedings of another Court.*

Portes.

The Cinque Ports are not absolutely exclusive of the Common Law, so that it may not intermedle in

in some Cases, with the proceedings in their Court. *Mich. 22. Car. B. r. For the Common Law is the universal and supreme Judge of the Nation, and no place ought to be so priviledged, either by custome or charter, as totally to be exempted from its jurisdiction; for that might cause a failer of Justice in some cases, if it should be so.*

A Writ of Error to reverse a Judgement given in the Cinque Ports, is to be brought before the Warden and Constable of *Dover. Mich. 22. Car. B. r.*

Whether a *Certiorari* lies to any of the Cinque Ports hath been a question. *Pasc. 23. Car. B. r. To a* Certiorari *was granted out of this Court, to remove a Judgement given at* Dymchurch *in* Kent, *being a limb of one of the Cinque Ports, in* Rook *and* Knights *case.* Mich. 22. Car. B. r. Rot. 381. *moved by* Launcelot Johnson *of the Inner Temple.*

Property.

He that hath the Land that lies on both sides of a High way, hath the Property of the soile of the High-way in him, although the King hath the priviledge for his people to pass through it at their pleasures; for the Law presumes that the way was at the first taken out of the Lands of the party that owes the Lands that lye upon both sides of the way. *Mich. 22. Car. B. r. By* Rolle. *So that it seems it is called the Kings High-way, because of the priviledge that the King hath in it for his people to pass and repass through it, and not in respect of any Property he hath in the soile it self.*

He that hath the goods of another person delivered unto him to keep, hath a special Property in them, by

by reason of the delivery of them, and may maintain an Action against a stranger that shall take them out of his possession; although they be not his own proper goods. *Hil. 22. Car. B. S. Because an Action doth lye against him to whom they were first delivered by him that did deliver them, if he shall not redeliver them when he is demanded to do it.*

A Legatee of goods hath no Property in the goods bequeathed unto him before they be delivered unto him by the Executor or Administrator. *Mich. 23. Car. B. r. For the property of them is not altered by the Will.*

The Rector of a Parish Church shall be intended to be the proprietor or owner of the tithes of the Parish, if the contrary be not shewed. *Trin. 24. Car. B. r. Because generally tithes do belong to the Rector, although in many places they do not.*

If the Sea or a River shall by violent incursion and breaking forth, carry away the soil of one, in so great a quantity that he that had the Property in the soile can know where his Land is, he shall have it; but if his soil or land be insensibly, or by little and little wasted by the Sea or the River, he must lose his Land. *Pasc. 1650. B. S. 11. Maii.*

If one to support the credite of a Bankrupt, will suffer the Bankrupt to have his goods in his custody, and to dispose of the Property of them, the Property of the goods shall be accounted to be in the Bankrupt, and the other upon a tryal for the Property of them, shall be judged to have lost his Property in them. *Pasc. 1651. B. S. 28. Ap. Because by so doing he was a cause in part that others were deceived by the Bankrupt, whose credit he supported, and therefore he is justly punished.*

Partition.

A Partition of Lands ought to be made according to the quality, and the true value of the Lands, and not according to the quantity or equal number of Acres. *Hill. 22. Car. B. r. For the Partition ought to be equal, which is so in the latter, but may not be so in the division by equality of Acres.*

Payment.

Payment of money before the day of Payment appointed, is in Law a Payment at the day. *Mich. 22. Car. B. r. For it cannot be in Presumption of Law, any prejudice to him to whom the Payment is made, to have his money paid before the time.*

In an Action of Debt brought for Rent due upon an Indenture of Demise of Lands, the Defendant may plead payment without a Deed, and it is a good Plea in Bar of the Action. *Trin. 24. Car. B. r. Because the Lessee cannot compell the Lessor to make him any discharge by Deed or Writting upon Payment of the Rent.*

If one buy any thing of another, he that buyes it, must pay the money contracted for to be paid for it, before the seller is bound to deliver him the thing sold. *Pasch. 24. Car. For the contract doth imply such a condition in it.*

A Payment of money shall be interpreted to be made according to his intention that payes it, and not according to his intention that receives it. *Mich. 16 Jac. B. S. 22. Nov. For every one ought to interprit the intention of his own act, and not another.*

Pre-

Procedendo.

If this Court do proceed to try a Custome of *London*, there the Party may move for a Procedendo, that the cause may be removed into *London*, that the Custome may be tryed there, for it cannot be tryed here, and so if a Procedendo should not be granted, the cause would remain untryed, and the party that brought the Action, would be without remedy. *Hil. 22. Car. B. r.*

After the Defendant hath filed Baile in this Court, a Procedendo ought not to be granted, much less after issue is joyned in the cause. *Pasc. 23. Car. B. r. For by admitting of the Bail, the Plaintiff hath admitted the jurisdiction of the Court, and it is then too late to move for a Procedendo.*

It is not necessary that a Procedendo do agree in form with the *Habeas Corpus*, by which the cause was removed into this Court, but it is sufficient if it do agree in the matter with it. *Trin. 24. Car. B. r.*

If the Defendant hath put in Bail in this Court, upon the removal of the cause hither by *Certiorari*, or *Habeas Corpus cum causa*, if afterwards the Bail be disalowed by the Court, if the Defendant shall refuse to put in better Bail, such as the Court shall approve of, a Procedendo may be granted to the Plaintiff to remove the cause back again to try it where the Action was first laid. *Mich. 24. Car. B. r. For disallowing of the Bail, makes the Defendant to be in the same condition, as if he had put in no Bail.*

If a *Certiorari* to remove a cause, be returned before a Judge and not in Court, and their follows no

proceedings in the cause after the *Certiorari* returned, if the party who is concerned will move for a Procedendo, he must move for it before the Judge, before whom the *Certiorari* was returned, and not in the Court whether the cause is removed. *Mich. 1649. B. S. Because the Judge hath been formerly acquainted with the return of the Certiorari, and may have better knowledge, why it was granted, and therefore the Court will not intermeddle to undo what the Judge hath done.*

Practice.

If the Attorney for the Plaintiff do tell the Defendants Attorney, that he is content to stay for a Plea till such a time, and yet doth in the mean time enter Judgment for want of a Plea, this is not fair practice, but if this be made to appear to the Court, the Court will vacate the Judgement, and force him to accept of a Plea. *Hill. 22. Car. B. r. For the Law will not countenance fraud and falshood in the proceedings thereof, but loves plain and fair practice.*

It is not fair practice for the Defendants Attorney to Demur to the Plaintiffs Declaration without probable cause, but onely to gaine time to plead. *Trin. 23. Car. B. r. For this is apparent cause of delay.*

Peace and Justice of Peace.

A Justice of Peace in one part of *York-shire*, is not a Justice of Peace throughout the whole County, but onely in that division of *York-shire* where he is authorised by his Commission to be a Justice. *Hil. 22. Car. B. r. This is in regard of the large extent of*

that

that County; for in other Counties a Justice of Peace in every County, is a Justice of Peace throughout the whole County.

The Peace was granted against one upon an Article sworn in Court amongst others, that he did threaten to burn down the Plaintiffs house. *Hil. 22 Car. B. r. For such mindeeling words are accounted to be a breach of the Peace, and such persons are dangerous persons to the Commonwealth, and to be restrained from doing mischief.*

A Justice of Peace ought not to binde a man to his good behaviour upon a general information, and if the party shall refuse to put in sureties for his good behaviour upon such an information; yet the Justice ought not to send him to the Gaol for his refusal. *Pasc. 23 Car. B. r. But the information must be particular, and shew wherein the misbehaviour consist: for* accusatio generalis, non est applicabilis personæ particulari.

It is the duty of Justices of Peace to attend duly at the quarter Sessions, and at the Assizes held for the County where they are Justices. *Pasc. 23 Car. B. r. For there are the most important Business which concern the Peace and Government of the County managed.*

The Commission of *Oyer* and *Terminer* doth extend to Justices of the Peace. *Pasc. 23 Car. B. r.*

A Justice of Peace may himself actually arrest and commit a Felon, for a Felony done in his own view, without any Warrant made to another to do it, but he may not command one to be apprehended for Felony upon a bare information made against the party but by a warrant under his hand and Seal, and not by Paroll. *Pasc. 23. Car. B. r.*

It is the course used in the Capital Office, to continue one that is there bound to the Peace to be so bound during his life; but by *Rolls* Chief Justice, this is not reasonable. *Pasc.* 1651. *B. S.* 13. *Main.*

If the person that is to be bound unto the Peace, be a dangerous person, and the cause for which he is to be bound, do require great security, a Justice of Peace may require him to find extraordinary sureties to be bound with him, and in what sum he shall judge the cause doth require. *Pasc.* 1652. *B. S.*

If the Court do see cause to bind one to the Peace they may do it, although no person doth make Oath that he goes in fear of his Life of the party. *Pasc.* 1652. *B. S. For such Oath is but evidence against the party, that there is cause to bind him to the peace, and if the Court be satisfied that there is cause to do it without such evidence, the not having of such an Oath is no hindrance unto them to do it.*

If one do swear the Peace in Court against another, that is, doth make Oath that he goes in fear of his life or corporal hurt of him, the party against whom this Oath is made, ought to be committed if he do not find sureties for the Peace, although there be no Articles exhibited and sworn against him. *Mich.* 1652. *B. S.*

Privileged.

A Committee man of Parliament that is not a Member of the Parliament is not Privileged from serving upon the grand enquest. *Hill.* 21. *Car. B. R.*

A Clerk of this Court is not to be compelled to lay his Action out of that County where this Court doth sit. *Mich.* 22. *Car. B. R. By reason of the con-*

stant

ſtant attendance he is bound unto in this Court.

No Priviledge is to be allowed to one that hath an Indictment preferred againſt him, although he be a Peer of the Realm. *Mich. 22. Car. B. r. For an Indictment is at the ſuit of the King, and againſt him no Priviledge is to be allowed.*

One that was coming unto this Court to attend upon his cauſe, was arreſted as he was coming, and was forced to put in Bail; but upon a motion, and making it ſo to appear unto the Court, he and his Bail were both diſcharged. *Mich. 22. Car. B. r. And the party that arreſted him had been alſo puniſhed, had he not pleaded that he knew not that the party came about his buſineſs depending in the Court.*

One may have a Priviledge in the Land of another by Preſcription; although he hath no title to the Freehold or ſoil. *Paſc. 23. Car. B. r. For although he now have it by preſcription, it might ariſe originally by grant, and whatſoever lies in grant, may be claimed by preſcription.*

One that is Priviledged in this Court, ought not thereby to claim his Priviledge to have a tryal at the Bar for to try the title of Lands which he claims in reremainder. *Trin. 23. Car. B. r. For it is incertain whether the remainder may fall whilſt he continues a Priviledged perſon, and for the preſent he claims no preſent intereſt in the Lands; Nay though he had a preſent claim to them, yet he ought not to be ſo Priviledged if the Lands in queſtion be not of a great value, or elſe the title very difficult to be tryed, and in ſuch caſes, any other perſon, though not Priviledged, may have a tryal at the Bar.*

A Priviledged perſon ſhall not be allowed his Priviledge

viledge upon a motion for it to the Court; but he must appear and plead his Priviledge, and upon his pleading it, he shall be allowed it. *Mich. 23. Car. B. r.*

A *Philisers* Clerk did claim to be Priviledged in this Court, but was denyed it. *Mich. 23 Car. For though the master may be Priviledged, yet the Court takes no notice of the servant.*

The Lord Major of the City of *London* is Priviledged from all Actions during his Maioralty, in regard of his Office, except it be for Felony or Treason, or Actions which concern Free-hold. *Pasc. 24. Car. B. r. For these are matters of a high nature, and in much concerns the Publicke to have speedy Justice to be done in them.*

A Member of Parliament is Priviledged, as well in his Lands and goods as in his person. By *Rolle* Chief Justice. *Mich. 24. Car. B. r. In the Case of the Lord* Moon; *for by being disturbed in any of them, he is hindred in serving of the Commonwealth.*

An Atturney of this Court may Plead his Priviledge here, after he hath made his defence in the cause in another Court. *Pasc. 1650. B. S. 4. Maii. For his pleading there doth not take away his Priviledge here, but doth onely dispence with it for that time.*

The wife of an Atturney of this Court cannot claim her Priviledge as his wife, for the Priviledge is inseperabley annexed unto his person. *Pasc. 1650. B. S. 7. Maii. But if she be arrested, her husband must put in Bail for her.*

An Atturney of this Court that is sued as an Executor, is not to be Priviledged, for he is sued in the right of the Testator, and not in his own right. *Pasc. 1650. B. S. 7. Maii.*

The

The Prayer of Priviledge is not properly a plea, for a Priviledged person did anciently demand his Priviledge by Writ, but of latter times the party hath been admitted to his Priviledge upon his prayer to the Court. By *Latch* Apprentise. 1654. *B.R.*

Party and Privy.

Where one desires to be made a party to defend the title of the Land in question, in an *ejectione firmæ*, the Court will grant it, so that he will confess, Lease, Entry, and Ouster. *Pasc.* 23 *Car. B.r. In* Prince *and* Warners *Case.* 2. Mail. 1648. *But now that rule is enlarged, for he must now confess, Lease, Entry, and actual Ouster, and must not except against the Jury for want of Hundredors, but insist onely upon the tryal of the title; and if at the tryal he do not all this, then Judgement is to be entred against the Lessors cum ejectior.*

Purchase.

An Alien cannot purchase Lands in *England*, because by this means the Realm would be impoverished by transporting the treasure out of the Realm into foreign Countries; and by putting thereby part of the Lands of this Realm, that is to say, the Lands Purchased by the Alien under the power of a foreign Prince. *Pasc.* 23, *Car. B.r.*

Prescriptions.

One cannot prescribe to have two several wayes by one joynt Prescription, but he must make several Prescrip-

Preſcriptions for them. *Trin. 23. Car. B. r.*

Two Tenants in Common cannot Preſcribe for one Wacrein. *Trin. 23. Car. B. r. That is ſeverally, for they cannot both have it ſeverally.*

A Copy-holder for life cannot Preſcribe againſt his Lord, by reaſon of his Copy-hold, but a Copy-holder in Fee may Preſcribe, for he holds his Copy-hold, in the nature of an inheritance. *Mich. 6. Nov. B. S. 1650.*

Pariſh.

A Pariſh may compriſe many Vills within it. *Hill. 23. Car. B. r. 24. Car. Plac. Tot generally a Pariſh ſhall not be accounted to have any more then one Vill in it, except the contrary be ſhewed.* Hill. 23. Car. B. r.

It ſhall not be intended that there is more then one Pariſh in a City, except the contrary be made to appear. *Trin. 23. Car. B. r. For ſome Cities have but one Pariſh.*

If the father of poor children leave the Pariſh, and leave his children in the Pariſh, if the children have a Grandfather in the Pariſh that is able to keep them, the Pariſh is not bound to maintain them, but the Grandfather. *Mich. 24. Car. B. r.*

If a High-way lye within a Pariſh, the Pariſh within which it lyeth is bound to repair it of common right, if it do not appear that ſome other perſons are bound by Law to repaire it. *Mich. 1650. B. S. 24. Ob. For it ſhall be intended that the Pariſhioners, wherein lyes, have the greateſt benefit of it, and do make the moſt uſe of it.*

Pre

Presentation.

If the King do present to a Church by Laps, where he ought to present *plena jure*, and as Patron of the Church; such a Presentation is not good. *Hill.* 23. *Car. B. r. For the King is deceived in his grant.*

The King may present to a Church by his letter sent to the Ordinary to institute and induct such an one his Clerk to the Living. *Mich.* 1649. *B. S. Q. Whether he may do it by Parol, and it seems to me he may for a letter is but a signification of his pleasure, which he may as well signifie by word as by writting.*

Principal and Accessory.

One that is present and aiding to the stabbing of another, is not a Principal, but only an Accessory to the stabbing, within the Act of 1. *Jac.* that made stabbing to be murder. *Hill.* 23. *Car. B. r.*

Proof.

Although a record of a thing be lost, yet the matter may be proved by circumstances to a Jury. *Pasc.* 24. *Car. B. r. For the right doth not wholly depend upon the Record, but a Record is to make the right more clearly appear, and to preserve the memory of it to posterity.*

If a Deed which is to be given in evidence at a tryal, be enrolled, there needeth no other proof of the Deed, then to shew the endorsement of the Enrollment. *Mich.* 1649. *B. S. For before a Deed can be enrolled, the party to the Deed muth acknowledge it before a master of the Chancery,*

cery, that the Deed to be enrolled is his Deed, if the Deed be to be enrolled there, or before a Judge of the Court where it is enrolled, which is a sufficient authority to enroll it, and to give credit to the Deed.

A proviſoe in a Deed, which proviſo goes in deſtruction of the eſtate paſſed by the Deed, muſt be punctually proved. *Mich.* 1649. *B. S. For the Law doth not favour things which ſound in deſtruction of eſtates, but ſuch things as tend to the affirmance and preſervation of them.*

If a Place be named with an *alias*, it is not neceſſary upon a tryal to prove both the names. By *Rolls* Chief Juſtice. *Mich.* 1650. *B. S.* Q. *Tamen*, For Crawley *when he was Juſtice was of another opinion.*

A Deed which is enrolled, and is not acknowledged before a Maſter of the Chancery, as a Deed which is enrolled *ad perpetuam rei memoriam*, and not to paſs an eſtate, may be muſt be Proved by Witneſſes, if it be given in evidence at a tryal. *Mich.* 1649. *B. S. For the acknowledging of it before the maſter, is that which gives credit to the Deed, and not the Endorſement of the Enrollment, which is but the act of a Clerk in the Office.*

A thing which is Proved to have been and continued for ſo long time as any one living can remember, ſhall be preſumed to have been beyond the memory of man, and will be accounted a good preſcription. *Paſe.* 1650. *B. S.* 11. *Maii. Becauſe the contrary cannot be proved.*

Plaint.

A Plaint is the cauſe which the Plaintiff doth expreſs in the Writ, for which he complains to the King againſt

gainſt the Defendant, and for which he doth obtain his Writ. 21. *Car. For as the King denys his Writ to none, if there be cauſe to grant it, ſo he grants not his Writ to any without there be cauſe alledged for it; for as the King is bound to help them to right that ſuffer wrong, ſo he is bound (as much as in him lies) to defend his people from cauſeleſs vexation.*

A Plaint in an inferior Court, is in the nature of an original Writ. *Paſc.* 1652. *B. S. For therein is briefly ſet forth the Plaintiffs cauſe of Action.*

Poor.

If the Father of Children do leave the Pariſh where he dwelleth, and there is a Grandfather of the Children to be found, this Grandfather, if he be able, is chargeable with the keeping of the Children, and not the Pariſh. *Mich.* 24. *Car. B. r. For the tye of Nature is a neerer tye then the Law can or doth enjoyn.*

Preſentment.

A Preſentment taken before Commiſſioners of Sewers was quaſhed, becauſe 1. it did not appear in the Preſentment by what authority the Commiſſioners did ſit that took the Preſentment. And 2. becauſe it did not appear that any of the Commiſſioners before whom the Preſentment was taken, were of the *Quorum*, *Hil.* 1649. *B. S. As is directed by the Statute that gives them their authority.*

Parliament.

The Parliament is not accounted to begin untill the firſt day of the ſitting thereof, although Writs are returned, and many adjournments may be before.

Paſc.

Pasc. 1650 B. S. 21. Maii. The Writs mentioned are meant the Writs directed to the Sheriffs of the several Counties, and to the Cities and Burroughs, to Elect Members for them to serve in Parliament.

Presidents.

If there be a special cause to alter the ancient President of a Writ, the Cursitors are not to keep the old form, but are bound to alter it as the case requires, and if they shall refuse to do it, this Court will compell them to it. *Trin. 1650. B. S. Else it would be very mischievous to the people, who by that means may have their Writs abated, and be put to the trouble and charge of purchasing of new Writs, by reason of their wilfulness and ignorance.*

Prisoner and Prison.

One that is imprisoned upon a *Capias utlagatum*, ought to be imprisoned as strictly as he that is in prison upon an Execution. *Trin. 1650. B. S. 3. Julii. For he that refuseth to answer the Law, offends in a high (if not in a higher nature) then he that is condemned by the Law, and is to be punished as highly.*

It is the course of the Court, when a Prisoner is delivered over by this Court unto the Marshal of the Court, to endorse the day of this delivery upon the back of the Writ. *Mich. 1650 B. r. 20. Nov.*

This Court may send for a Prisoner out of the Prison of the Marshalsea, without a *Habeas Corpus*, because that Prison doth belong to this Court, but they cannot send for a Prisoner out of any other Prison, but by a Writ of *Habeas Corpus*. By *Rolle* Chief Justice. *Mich. 1650. B. S.* Posse-

Possession.

If one do make an Entry into the Lands of another, and that other doth notwithstanding the Entry, keep the Possession of the Lands entred into with his servants and cattel, the entry is no entry in Law, but if the servants and cattel be put out to gain the Possession, he that is put thus out of Possession, if he will proven Possession in himself after this, he must prove an actual entry afterward. *Pasc.* 1650. *B. S.* 25. *Ap.*

The proving of ones cattel, to be upon the Land in question, is not a sufficient proof, that he whose cattel they were, was in possession of the Land at that time when the cattel were there. *Pasc.* 1650. *B. S. For the cattel might be upon the Land* Dammage feasant.

Peremptory.

By the rules of the Court, a Peremptory day is not to be given to the Defendant upon a Judgement given against him, upon a *non sum informatus*, at the first reading of the record; but the Court will appoint a day to hear Councel. *Mich.* 22. *Car. B. r.*

If the Defendant do tender an issue in abatement of the Writ, and the Plaintiff doth Demur upon the issue, and upon arguing of the Demurrer, the issue is over-ruled, that is, is adjudged by the Court to be no good issue; the Defendant is onely to answer over, that is, to tender a better issue, for the over-ruling of the former was not Peremptory to him. *Trin.* 24. *Car. B. r. But otherwise it is where such an issue is tendred upon it, is in bar of the Action, for there the merits of the cause is put upon it, but in the former,*

the

the validity of the Writ is onely in question, and not then the defendant is thereby compellable to plead to the Plaintiff or not.

If a Peremptory be put off by the Court, the party that will take advantage by the putting of it off ought to enter the rule of Court that was made for the putting of it off. *Trin.* 1651. *B. S. A Peremptory is when a business is by a rule of Court to be spoken unto at a precise day, and if it cannot be spoken unto then by reason of other businesses of the Court; the Court in such cases doth use at the prayer of the party, who is concerned, to dispense with the not speaking to it at that time, and doth give the party further time to speak in it, without prejudice to him, and this is called the putting off of a Peremptory.*

Proclamation.

At the latter end of the Assizes, there useth to be Proclamation made, that no more records of *nisi prius* be put in to be tryed at that Assizes, and that they shall not be received after, and all persons that are to attend their tryals, if the Records of *nisi prius* to be tryed be not then put in, may depart, and are bound to give no longer attendance at that Assizes. *Pasc.* 1652. *B. S.*

Quashing of Endictments, Orders, &c.

THis Court hath authority to Quash Orders of Sessions, Presentments, Endictments, *&c.* made in

in inferior Courts, or before Justices of the Peace or other Commissioners if there be cause, that is, if they be defective in matter or form. *Mich.* 22. *Car. B.r. To Quash comes of the* French *word* Quasser, *or rather* Casser *which signifies to break in peices, to cancel, destroy, make null or voide. But this Quashing is but by favour of the Court: for the Court is not tyed* Ex Officio *to do it, but may leave the party to plead unto them, and to take advantage of the insufficiency of them by pleading to them, as in many cases they use to do.*

An Endictment may be Quashed for false Latine, or for having in it insensible words, or *English* words, or for defect in the form of it. *Trin.* 23. *Car. B.r. But now by the late Act it may be in* English.

The Court will not Quash an Endictment of forcible entry after a Verdict, before hearing of both the parties concerned in the cause. *Mich.* 23. *Car. B.r.*

The Court will not Quash an information for a fault in the body of it, but will leave the Defendant to demur unto it, if he believe it to be insufficient; but it is otherwise of an Endictment. *Pasc.* 1650. *B.S.* 24 *Maii. Quære rationem.*

Quo Warranto.

A *Quo Warranto* was brought for vexation upon fourty eight points, and the Court being moved in it, did order that the prosecutor should wave that *Quo Warranto*, and should bring a new one, and therein insist onely upon three points, but that he might proceed to a tryall upon it, in such time as he

might have done upon the old. *Hill.* 22. *Car. B. r.*

Quare.

Whether one that is under an Arrest may make an Obligation to the Plaintiff at whose sute he was arrested, for his appearance to his Action. *Pasc.* 24. *Car. B.r. Pasc.* 1648. *B. S. In* Leach *and* Devyes *Case.*

If a Lessee for years cut down Timber upon the Land let unto him, and carry it away from off the ground. Q. *whether the Lessor may bring an Action of Trever and Conversion, for the Timber.* Mich. 24. Car. B. r.

Whether a fine levyed of Land shall extend to a contingent use of that Land. *Mich.* 24. *Car. B.r. In* Thomas *and* Kemishes *Case.*

If there be two Tenants in Common of Land, and one of them dye. Quære. *How his wife shall be endowed of the Land which her husband held in common, whether by metes and bounds or not.* 16. Nov. 1650. B.S.

Return of Writs, &c.

THe Court was moved, that a return made upon a *Habeas Corpus* might be amended before it was filed, and it was granted. *Hill.* 21. *Car. B.r. But after it is filed it cannot be amended, for then it is a Record of the Court.*

If a special *Scire Facias* do issue forth, a *nihil* cannot be returned upon this *Scire Facias. Hill.* 21. *Car. B. r. For a* nihil *is a general return, which ought*

not

not to be in this caſe, becauſe the Writ is a ſpecial Writ.

If an inferior Court do make an ill return of *Habeas Corpus*, the Court will grant an *alias Habeas Corpus*, and alſo ſet an amercement upon them for making an ill return of the former *Habeas Corpus*. *Hill.* 21. *Car. B. r. Becauſe thereby*, viz. *by the ill return, Juſtice is delayed, and the party grieved is alſo put to more trouble and charge to obtain it.*

If a Writ out of this Court be directed to an inferior Court, which the inferior Court is not bound to allow, but may proceed notwithſtanding the Writ ſent unto them, yet they ought to make a Return upon the Writ, and in the Return to ſhew the cauſe, why they do not allow the Writ, but do proceed in the Cauſe, notwithſtanding the Writ. *Hill.* 22. *Car. B. r. For the Writs of this Court are to be obeyed, if there be not very good reaſon ſhewed to the contrary why they ought not to be obeyed.*

A priſoner brought to the Bar, upon the Return of his *Habeas Corpus* may have a Copy of the Return, if he pray it, that he may take his exceptions to the Return. *Mich.* 22. *Car. B. r. But the Return muſt be firſt filed.*

If the Under Sheriff of a County may be juſtly challenged, as partial to the Plaintiff, or the Defendant in reſpect of kindred or alliance, or ſome other cauſe that may render him not to be indifferent between the parties; and he be to execute a *Venire Facias*, to ſummon to a Jury to try an iſſue joyned betwixt the Plaintiff and Defendant, in ſuch caſes the Court will upon motion of the party that is likely to be prejudiced if a Jury ſhould be returned by him, order that the High Sheriff of the County ſhall himſelf Return the Jury. *Mich.* 21. *Car. B. r.*

If one be arrested by the Sheriffs Bailiff, and a Bond be given unto the Sheriff, that the party arrested shall appear at the Return of the Writ; the Sheriff ought not to Return a *Non est inventus*, but a *Cepi Corpus*, and if he do Return a *non est inventus*, the Plaintiff may bring an Action upon the Case against the Sheriff for making a false Return, or else the Court may amerce him for it; and if the Sheriff do Return a *Cepi Corpus*, and yet the party Arrested doth not appear at the day, the Court will encrease amercements upon the Sheriff, untill he make the party to appear. *Hill. 22. Car. B. r. For when the party is arrested, he is in custody of the Sheriff, and he ought to keep him at his peril, and bring him in at the day, and it is of favour to the party that he takes Bond of him for his appearance, for he is not bound to do it; and if he suffer by it, he may take his remedy against the party upon the bond.*

It is not requisite that the Sheriff in making a Return should insert his title or name of dignity or Christian, or surname, but onely by his name of office. *Hill. 22. Car. B. r. Yet if he do insert those names which is usually done, the Return is not thereby hurt or made defective.*

If the Sheriff Return a *Cepi Corpus*, and the party arrested is sick and doth not appear, there may a *Habeas Corpus licet languidus*, issue out of this Court to bring the party in, notwithstanding his sickness. *Hill. 22. Car. B. r. So that in some cases the party is not excused from obeying the Law, though the hand of God be upon him; for the Law regards publike Justice more than the private good and welfare of any particular person, yea of many particular persons, although it be also tender of the persons of all.*

If

If a *Capias* be awarded, and the party dye before the Return of it, he may be helped by pleading of it. *Hill. 22. Car. B. r.*

If a Writ be Returned by a person to whom it was not directed, the Return is not good. *Hill. 22. Car. B. r. For Processes of Law are to be executed by such persons onely, as the Law takes notice of, as publike ministers who are accountable for their actions, and not by private persons.*

A Return of the Sheriff ought not to mention the year of the Age of the King, but the year of the reign of the Kings. *Pasc. 24. Car. B. r. For the Sheriffs and all ministers of Justice are Officers to the King in his politick capacity, and not in his natural capacity, and as he is a King which relates to the time he began to reign, and not as a man to the time of his birth.*

Where a matter to be tryed by a Jury doth concern the title or interest of the Under-Sheriff, there the Jury that is to try this matter, is to be returned by the High-Sheriff, and not the Under-Sheriff. *Trin. 24. Car. B. r. For it is to be presumed that the Under-Sheriff will not Return an indifferent Jury, where himself is concerned, for every one is apt to be partial for his own benefit.*

It is not necessary for the Sheriff to Return the panel of the Juries names, but to say that they are *de vicinete* of such a place, for so it shall be intended, and the form of all Returns of Juries are so. *Trin. 24. Car. B. r.*

It is not necessary that the Return of a *Habeas Corpus*, or a Return made by Commissioners of Sewers, should be so formal and punctual, as a Plea ought to be. *Mich. 24. Car. B. r. Mich. 1649. For there is not so much prejudice to any one by their informality*

as may be by informal and ill pleading, neither are such Returns made by so learned men as pleadings are, and therefore the Court expects not, they should be so curious in framing of them, but will accept of them for good, if they be good in the substance of them, and to a common intent.

A Return of a *Habeas Corpus* ought to be written in Parchment and not in Paper; and if it be made in Paper it is not good, nor will the Court accept of it. *Mich. 24. Car. B. r. Pasc. 1650. For the Return is to be filed, and made a Record of the Court, and all records are to be in Parchment, that they may continue to posterity, which they will not so well do, if they were written in Paper.*

If a *Habeas Corpus cum causa*, that is, a *Habeas Corpus* to remove the body of the party, and of his cause depending, be directed to an inferior Court, they ought to Return the body and all the causes that are there depending against him, if they be for the value of above five pounds, and it is not sufficient to Return one or some of the causes. *Mich. 24. Car. B. r. For the word* causa *is there taken for* nomen collectivum *comprehending more then one.*

In criminal matters, proceedings which are erroneous, are not helped after a Verdict, by the Statute of Jeofailes. *Pasc. 1651 B. S. 11. Mali. This is in favour of the life and liberty of the people which are most concerned in such proceedings, and are much favoured in Law.*

Record.

A *Habeas Corpus* is not a Record, until it is returned and filed, and then it cannot be amended, but before it be filed, it may. *Hill. 21. Car B. r.*

If

If the writing or form of a Letter in a Record be doubtful, so that it may be taken either for one Letter or another Letter, the Court will construe it to stand for that letter, that is, for the maintaining and upholding of the Record, and not that letter which will go to the making of the Record erroneous and naught. *Hill. 21. Car. B. r. For the Law doth delight to maintain the reality and being of things, and favours not the destruction and nullifying of them, and therefore if a Record be so penned, that the words may receive a double construction, one to make the Record good, and another to make it erroneous, the Court will interpret the words that way, that will make the Record good, and not that way which will make it erroneous.*

A matter of Record must be proved by the Record it self, and not by evidence; for no issue can be joyned upon it to be tryed by a Jury, as it is of matters of fact. *21. Car. B. r. For the credit of a Record is greater then any testimony of witnesses.*

A Record certified out of an inferior Court, upon a Writ of Error brought, and a Certiorari thereupon directed to them to certifie the Record, is not said to be in this Court to be proceeded upon before it be entred here, or be in the Office, although it be shewed there. *21. Car. B. r.*

A Record ought to be pleaded intire, that is the whole Record, and not part of it, with an *inter alia*, in reference to the Record, and so ought a special Verdict to find a Record. *Mich. 22. Car. B. r. For part of a Record, is not the Record, for a Record cannot be taken by parcels.*

This Court will not amend a Record which is moved out of an inferior Court; but they will amend a

Record which is removed hither out of the Common Pleas if they see cause, and so they will do Records removed out of the County Palatine of *Chester*, and some other Courts sometimes. *Mich. 22. Car. B. r. Because they take no notice of the proceedings in inferior Courts, but the County Palatine and some other Courts are of a higher nature.*

The Court will not supply a blank left in a Record to make it perfect, whereas before it was defective. *Mich. 22. Car. B. r. For this were for the Court to make a Record which is not their Office to do, but to Judge of them, and by so doing the party that might take advantage of the defect of the Record, would thereby be deprived of it.*

If the Record of the issue made up ready for the tryal of the cause be defective in some small thing which may be well amended without defacing of the Record; the Court upon a motion will give the party leave to amend the Record if he will pay costs to the Defendant; although it be entred for tryal: but the Court will not give leave to amend it if it cannot be done without defacing and much altering of the Record. *Mich. 22. Car. B. r.*

The Court will not make application of a Record produced to the matter for which it was produced for the benefit of the party that doth produce it, but the party and his Councel must do it. *Pasc. 23. Car. B. r. For if the Court should do it, it would be for them to act the part of Counsellors, and not of Judges, which they ought not to do*

A transcript of a Record, which Record was amended in the Common Pleas, may by leave of the Court, be amended in this Court by a Clerk of this Court, but without leave of the Court, nor out of the

the Court it may not be done. *Pasc.* 23. *Car. B.r. For a Record cannot be amended without a rule of the Court, for that is called the leave of the Court, for the Court speaks by their rules.*

The Judges cannot judge of a Record given in evidence, if the Record be not *sub pede sigilli*, that is, exemplified under seal, but a Jury may find a Record, although it be not so, if they have other matter given them in evidence sufficient to induce them to believe that there was such a Record. *Pasc.* 23. *Car. B.r. For the Judges are to judge onely* de existentibus, & apparentibus, *but the Jury are induced by things which are but probable, for the most part, and accordingly they give their Verdict.*

If a Record be removed into this Court by a Writ of Error, and the Defendants Councel in the Writ of Error, do not open the Record right as it is, unto the Court, this false opening of it shall not be prejudicial to the Plaintiff in the Writ of Error, but he may examine the Record afterwards, and rectifie the misrecitals. *Trin.* 23. *Car. B.r.*

A Record may be contradictory in appearance, and yet may in some case be nevertheless a good Record *Trin.* 23. *Car. B.r.*

A Record that that is razed, remains a good Record notwithstanding the rasure in it, yet he that razed it, is not to go unpunished for his offence. *Mich.* 1649.

Apparent faults of the Clerk onely in Records removed out of inferior Courts into this Court, are amendable here by the Statute of 8. *H.* 6. *Trin.* 23. *Car. B.r. But not other faults or errors in them.*

Neither a Deed enrolled, or a Decree in *Chancery* enrolled, are Records, but it is a Deed and a Decree.

Record-

Recorded. *Mich.* 23. *Car. B. r. For a Record of a Court is made up of the proceedings in ſome cauſe in that Court.*

When a Record is to be ſpoken unto in Court, the Councel at the Bar ought to open the Record before it is to be read by the Clerk in Court, by the cuſtome of practice; yet the Court may ſuffer it to be firſt read if they pleaſe. *Hill.* 23. *Car. B. r.*

There was a rule of Court made, that every Attorney of the Court ſhall enter the whole Record upon the roll, after a Tryal had in the cauſe, before the next Term after the tryal ſo had, upon the pain of twenty ſhillings to be paid by every ſuch Attorney that ſhall not do it, towards the relief of the poor. *Hill.* 1649 *B. S. That the Record may be ſpoken to the next Term after the tryal, if there be cauſe, which cannot be done untill the Record be perfected, and ſo by this the not perfecting it, the Clyent is delayed.*

A Record cannot be removed by a Writ of Error, untill the Judgement in that Record be entred. *Paſc.* 1650. *B. S.* 12. *Maii.*

By *Rolle* Chief Juſtice, it was the ancient cuſtome to enter the Record of the Cauſe before the cauſe was carryed down to the Aſſizes to be tryed; but this courſe was found to be inconvenient, becauſe it could not be amended after the entry of it, and therefore now they uſe not to enter the cauſe before the tryal be paſt, and therefore he ordered a rule to be ſet up in the Office, that if the tryal do not proceed at the Aſſizes, at which the Record was carryed down to be tryed, and the Plaintiff will carry it down again, that he give the Defendant new notice of the tryal. and ſo likewiſe is the Defendant to do where he intends to try the cauſe by proviſoe, that

the

the adverſe party may not attend with his Councel and Witneſſes to no purpoſe. *Trin.* 1651. *B. S.*

Relief.

A Relief is the fruit of a Rent-ſervice. *Hill.* 21. *Car. B. r.* *And it is twofold; that is to ſay,* 1. *A Relief at the Common Law;* *And* 2. *a Relief grounded upon a cuſtome.*

Reſcous.

An Endictment for a Reſcous returned againſt one into this Court, ought not be quaſhed, although it be erroneous, except the party that is endicted for it do appear perſonally in Court. 21. *Car. B. r.* *For he cannot in ſuch a caſe appear by Atturney, becauſe the offence was criminal and perſonal.*

An Endictment of Reſcous ought to expreſs the place where, and the time when the Reſcous was made, or elſe it is not good for the incertainty of it. *Trin.* 23. *Car. B. r.* *So that the Defendant cannot tell what anſwer to make for himſelf.*

An Endictment of one that was Endicted for a Reſcous, ſuppoſed to be made in the fifteenth year of King *Charles* was quaſhed for its inſufficiency, and yet the Reſcouſer did not appear perſonally in Court (contrary to the common rule obſerved in ſuch caſes) the cauſe thereof ſeems to be, becauſe it was an old Endictment, and no proceedings had been made upon it againſt the party. *Paſc.* 24. *Car. B.*

Requeſt.

Where one is to do a Collateral thing, he ought to be requeſted to do it, but where the thing to be done, is a part of the contract, there needs no Requeſt

queſt to be made to the party to do it. 21. Car. B. r. *For by the contract he hath taken notice at his peril to do it.*

Where one brings an Action of Covenant for not paying of moneys according to the Covenant, he needs not alleadge, that he Requeſted the Defendant to pay them; but where he brings an Action of Debt for money due by Covenant, he ought to alleadge a Requeſt. *Trin.* 23. *Car. B. r.* Q.

Where one is bound to make a ſpecial Requeſt for the doing of a thing, a general *licet ſæpius requiſitus* in the Declaration is not ſufficient. *Trin.* 24. *Car. B. r. For thoſe words are too general, and meer matter of form, and a ſpecial Requeſt ought to ſet forth the time and place, and manner of the Requeſt made.*

In an Action of Debt brought for moneys due upon an Obligation, it is not neceſſary to alleadge a Requeſt. *Trin.* 24. *Car. B. r. For the very bringing of the Action is a demand of the money in judgement of the Law; and the party was bound by his own Deed, to pay the money at his peril.*

One may make a Requeſt by Atturney for the payment of moneys due upon an Obligation. *Mich.* 24. *Car. B. r.*

Upon a contract in the nature of a Debt, Requeſt or no Requeſt is not material, but it is otherwiſe if the contract be a ſpecial contract for a Collaterall thing. *Mich.* 1650. *B. S.*

Repeal.

The Defendant cannot Repeal his Warrant of Atturney given to an Atturney to appear for him; but he is compellable to appear by his Atturney according

ing to his Warrant by the rules of the Court, that he may not delay his appearance by that means to the prejudice of the Plaintiff. *Trin.* 22. *Car. B. r.*

Reversal.

The chief Justice or the ancienteſt Judge in the Court in his abſence, doth alwayes pronounce the reverſal of an erroneous judgement to be Reverſed by a Writ of Error openly in Court, upon the prayer of the party, and he pronounceth it in *French*, to this effect, *Pur les errors avandit, et autres errors manifeſt in les record, ſoyt les judgement reverſe, & le Defendant reſtore, a tout ceo que il ad per ceo perd.* In Engliſh thus. For the aforeſaid errors, and other manifeſt errors in the Record, let the Judgement be Reverſed and the Defendant reſtored to all that which he hath loſt by it. *Trin.* 22. *Car. B. r. But now the Seignior Judge pronounceth it, and doth it in Engliſh.*

The Reverſal of a Judgement may be pronounced conditionally, that is, that the Judgement is Reverſed, if the Defendant in the Writ of Error do not ſhew cauſe to the contrary at an appointed time. *Trin.* 22. *Car. B. r.*

Where divers perſons ſtand Out-lawed for a forcible entry, if the Out-lawry be erroneous, it may be Reverſed as to one of the perſons Out lawed, and ſtand good as to the others, but the poſſeſſion of the Land cannot be reſtored untill the Out-lawry be Reverſed in the whole. *Hill.* 22. *Car. B. r.*

The Judge will not pronounce the Reverſal of an erroneous Judgement, though it be adjudged to be erroneous, except the Councel for the Plaintiff in the

Writ

Writ of Error do pray it may be pronounced. *Pas.* 1649. *B.S.* 30 Jan. *For the Judges are only to do justice to those that desire it.*

Restitution and Rerestitution.

No Restitution is to be granted by the Court, upon the suggestion of the insufficiency of an endictment of forcible entry or other matter, untill the *Certiorari* granted to remove the endictment into this Court be returned. *Mich.*22. *Car.B.r. For before the return the Court hath nothing before them upon record to judge upon.*

Where an endictment of forcible entry is quashed, the Court upon motion, doth usually grant the party endicted, a Writ of *Rerestitution*, to restore him to the possession of the Land: yet the Court may (if they please) settle the possession of the Land in question, according to their own discretions: *viz.* where they shall conceive the most right to be for the possession. *Mich.*22. *Car.B.r.*

There ought to be no Restitution or Rerestitution granted of the possession of Lands, where it cannot be grounded upon some matter of record. *Hill.* 22. *Car. B.r.*

A Writ of Restitution lies, to restore one to the place of one of the Common Councell of *London*, or to the place of a Constable, if he be illegally put out of such a place. *Trin.*22. *Car.B.r. Or to a Churchwardens place, or to a Recorders or Town-Clarks place, and generally to any publike Office, or place of profit, or trust, but not to a private Office or place.*

The words *remisit & relaxavit*, expressed in a Charter of pardon, granted by the King unto one

for

for a felony committed by him, do not reſtore him unto his goods which he forfeited unto the King by being convict of the felony: but there ought to be the word *reſtituit*, which doth properly and in its genuine ſignification, import a Reſtitution to a thing which he hath not: whereas the words *remiſit & relaxavit*, may ſignifie the remitting or releaſing of the claim which one hath to a thing, which is in his poſſeſſion to whom the releaſe is made. *Trin.* 23. *Car. B.r.*

The proper nature of a Writ of Reſtitution is, to reſtore the party that hath it, unto the poſſeſſion of a free-hold or other matter of profit. *Trin.* 23. *Car. B.r. Yet this doth not generally hold; for one may have a Writ of Reſtitution, in ſome Caſes, to be reſtored to a place of no profit, as is before expreſſed.*

The Law doth oftentimes reſtore the poſſeſſion to one without a Writ of Reſtitution: to wit, by a Writ of *Habere facias poſſeſſionem*, and otherwayes, in common courſe and proceedings of juſtice. *Trin.* 23. *Car. B.r.*

A Writ of Reſtitution, is not properly to be granted, but in ſuch Caſes where the party cannot be reſtored by an ordinary way of juſtice or courſe of Law, and many times ſuch caſes do happen. *Trin.* 23. *Car. B.r.*

If one be endicted for a forcible entry, and the party endicted do traverſe the endictment, he cannot have reſtitution granted unto him, before a tryall, and a verdict, and judgment alſo given for him, although the endictment be erroneous. *Mich.* 23. *Car. B.r. Mich.* 24. *Car. B.r. For it is too late to move to quaſh the endictment after he hath taken his traverſe, and ſo the endictment muſt ſtand good againſt him till the tryall.*

The

The Justices of Peace only before whom an endictment of forcible entry is found, must give the party Restitution who was put out of possession by force, and not other Justices of Peace of the County: but the Judges of this Court may grant a Writ of Restitution though the endictment was not found before them. *Hill.23.Car.B.r. For they have a superintendent power over all* England.

Where a Judgment for Land is reversed in this Court by a Writ of Error, the Court may grant a Writ of Restitution to the Sheriff, to put the party in possession of the Land recovered from him by the erroneous judgment. *Pasc.24.Car.B.r.*

There may a Writ of Restitution be granted to one that stands endicted for a forcible entry, after he hath traversed the endictment, and before the tryall, if there do appear to be apparent delay in the proceeding of the Defendant upon the traverse, else not, as is aforesaid. *Trin.24.Car B.r.*

There cannot be a Writ of *Rerestitution* granted, where there doth not appear to have been a Writ of Restitution formerly granted in the Case. *Mich.1650. B.S. For the very word* Rerestitution *doth imply, that there was a Writ of Restitution formerly granted.*

A Writ of *Rerestitution* may be granted upon a motion for it, if the Court see cause to grant it. *By Ask Justice.* Pasc.1650 B.S. 2. *Mail.*

Upon an endictment of forcible entry found against the party, if he do neither traverse nor plead to the endictment, the party put out of possession, may be restored to his possession without moving the Court. *Pasc.1650.B.S.22. Mail.*

Rule.

Rule.

The Court will not make a Rule for a thing which may be done by the course of the Court, without moving the Court; and if the Court be informed that they have made such a Rule, they will vacate it. *Mich. 22. Car. B. r. For the Court is not to be troubled with needless motions, and to do impertinent and useless things.*

The Attorneys are bound to observe the Rules of the Court, for if they should not, other Attorneys would not know what to do in their Clyents Causes, nor the Judges how to judg of the legality or illegality of the proceedings in Causes. *Mich. 22. Car. B. r. For to proceed in any thing without a Rule, is to walk in the dark, and tends to bring things to confusion.*

If the Court do make a Rule which was grounded upon an Affidavit, he that will move the Court against this Rule, must bring in the Affidavit into Court upon which the Rule was made. *Mich. 22. Car. B. r. That the Affidavit may be read in Court, to put the Court in minde for what reasons they made the Rule, and whether there be stronger reasons to vacate it, then there was for the making it, or not.*

The Plaintiff and Defendant are both bound at their perill, to take notice of the Rules made in Court touching the Cause depending between them. *Hil. 22. Car. B. r. Except part of the Rule be, that one party shall give notice to the other of the Rule made against him.*

The Court ought not to give a Rule to any prisoner in the Mareschallsea prison, to go at large, except such a prisoner have suits in Law of his own de-

pending at the time of the Rule made. *Pasc.* 23. *Car. B. r.*

If there be divers Rules of Court made in a Cause, and one of the parties intends to move the Court upon a Rule formerly made, he ought to move upon the last Rule made in the Cause. *Pasc.* 23. *Car. B. r. For else the Court cannot understand how far the Cause hath been proceeded in.*

The Court will make such a Rule, by the consent of both the parties, which without their consent they would not have made. *Pasc.* 23. *Car.* B. r. *For, Consensu partium, tollit errorem.*

The Court will not make a Rule for a prisoner that is not imprisoned in the Mareschallea. *Pasc.* 23. *Car. For that only is the prison which properly belongs to this Court, and of which this Court hath jurisdiction over.*

Any prisoner in the Mareschall, may have a Rule of Court, every day to go at large, if such prisoner hath business in Law of his own to follow: but such Rules do only extend, to give him leave to go and retorne from his Councell, and not for him to go elsewhere at his pleasure. *Pasc.* 23. *Car. B. r.*

Rules of Court ought to be interpreted according to rule and order, and not incertainly. *Mich.* 23. *Car.* B. r. *For were it otherwise, they would become snares and not Rules.*

One is not bound to take notice of a particular Rule of Court, except he have particular notice given him of the Rule. *Pasc.* 24. *Car. B. r.* Q. *Tamen. For it seems every one should be consonant, how the Court proceeds from time to time in his cause depending there.*

The Prejgnotaryes of the Common Pleas, will not make

make a Certificate to this Court of their proceedings there, without a Rule of this Court to enjoyn them to do it. *Trin. 24. Car. B. r. But then they are to do it for the better informing of this Court, And that the course of Justice may not be interrupted or delayed.*

A Rule made in a Judges Chamber must be entred in the Office, or else it is of no force to ground a motion upon. *Pasc. 1650. B. S. 10. Maii.*

If a prisoner have a day Rule, to permit him to go abroad, yet he ought not by vertue thereof to go into the Countrey, except it be in case where he hath business in Law there. *Mich. 1650. B. S. 12. Nov.*

Rejoynder.

If the Defendant do in his Rejoynder depart from his Plea pleaded, in barr this Rejoynder is not good. *Mich. 22. Car. B. r. For this is to say and unsay, which the Law doth not allow, for Pleas must be plain and certain.*

One ought not to Rejoyn upon such words which are not contained in the Declaration or Plea. *Mich. 23. Car. For that is for the party to frame a discourse of his own, and not to answer the Plaintiffs Plea.*

Remainder.

A contingent Remainder may be destroyed, by destroying the particular estate upon which it depends. *Mich. 22. Car. B. r. For take away the foundation that supports the building, and the building must needs fall.*

A Remainder is a residue of a thing going before; and yet in some case there may be a Remainder with-

out a particular estate *in esse* to support it; as it is in the Case of a Use in Remainder. *Hil. 22. Car. B. But this is not by the Common Law, but by the Statute.*

Residuum est ultima pars diversorum particularium. *Trin. 23. Car. B. r.*

Revocation.

A Revocation of Letters of Administration may be without a seal. *Mich. 22. Car. B. r. For it is but to signifie the pleasure of the ordinary, touching the administration of the goods of the intestate: but the Letters of Administration must be under seal, because thereby the administrator derives his authority, which ought to be fortified as well as may be.*

If an Attorney appear for his Client, and accept of a Declaration, the Client cannot revoke his warrant of Attorney, with an intent to stay the plaintiffs proceedings. *Mich. 24. Car. B. r. But the Court will force the Defendant to plead, and if he do not plead, will order that judgment be entred against him for not pleading.*

Ryot.

If divers persons do assemble together in a peaceable manner, and after they are so assembled, do act some Ryotous act, this is a Ryotous assembling of them, although they did not assemble at the first in a ryotous manner, but peaceably. *Hil. 24. Car. B. r. For the ryotous act shall have relation to their assembling together, so far as to construe it to be with a ryotous intent, although it did not appear so at the first.*

Two persons alone cannot make a Ryot, but there must be three persons together at the least

to

make a Ryot. 22. Car. B.r. But two persons may not a conspiracy.

Recognisance.

A Recognisance entred into in the Common Pleas, is entred specially; but a Recognisance entred into in this Court, is entred generally. *Pasc.* 23. *Car. B.r.*

Rolle.

The Plea Rolle, is of more credit and esteem in the Court then the Essoign Roll, for the Plea Roll is the Roll of the Court. *Pasc.* 23. *Car. B.r.*

If a Writ of Error be brought to reverse a Judgment, it is not necessary to mark the Roll; yet if it is not marked, that thereby the Attorney on the other side may take notice of the bringing of the Writ of Error, nor the Attorney on the other side, hath notice given him of the bringing of the Writ of Error, if he do proceed and take out execution upon the Judgment, it is no contempt to the court. *Mich.* 1649. B.S. *For it shall not be presumed he knew there was a Writ of Error brought; yet though it be no contempt in him to take out the Execution, yet the Execution shall be superseded,* quia improvide emanavit, *for by bringing of the Writ of Error, the hands of the Court where the judgment was given, were foreclosed from proceeding any further.*

Replevin.

A Replevin ought to be certain, in setting forth the number and kindes of the Cattell distrained, or else it is not good; because if it be incertain, the Sheriff cannot tell how to make deliverance of the Cattel,

because he knows not particularly what the cattle are that were distrained. *Trin. 23 Car. B. r.*

Replication.

If the Plaintiff do Reply to a Plea in Bar, which is not good by his replying to it, he hath confessed it to be good. *Trin. 23. Car. B. r. And so it shall be now taken to be, for he hath lost his advantage of demurring unto it, by passing by the defects of it, and replying unto it.*

If an Action for the breach of the condition of an Obligation be brought, and the Defendant do plead that he hath performed the condition, the Plaintiff in his Replication, must shew in what particularly, the Defendant hath broken this condition. *Pasc. 24. Car. B. r. That the Defendant may be able to give a particular answer to the breach assigned; and if he do not assign a particular breach, his Replication is idle, for it sayes no more then what was formerly said in the Declaration.*

Reservation.

If the Lessee for years, assign over all his term to another, and reserve a Rent, the Reservation is void. *Pasc. 24. Car. B. r. For by the assignment of the whole term, he hath no interest in the thing let, for the which he can challenge any Rent to be due.*

Recovery.

A Recovery cannot destroy a thing executory which doth depend upon a contingency. *Pasc. 24. Car. B. r. Because it was uncertain at the time of the Recovery suffered whether it would ever be or no,*

and

and a Recovery will not work upon so remote and uncertain an estate.

If a Recovery be suffered by Baron and Fem of Lands whereof the Fem hath an estate in Fee Simple, although there was no Tenant to the *precipe* of the Lands, yet this Recovery shall be a good *estoppel* against the Baron and Fem and their Heirs, but it would be otherwise, if the Lands had been Entailed at the time of the Recovery. By *Rolle* Chief Justice, *Mich.* 1650. *B. S.* 8. *Nov.*

It is not necessary for the Judge to examine a Fem Covert, when she joyns with her husband to suffer a Recovery of her own Lands, yet it is prudential to do it. *Trin.* 1651. *B. S. By* Rolle, *and he said that he used to do it.*

Release.

If the Defendant in an *ejectione firmæ*, will not defend the title of the Land in case the Verdict pass against the Plaintiff; the Ejector may Release the dammages to the Plaintiff. *Hill.* 1649. *B. S.* 11. *Feb. For he is the Defendant in Law, although the title do not concern him, and it is the others fault that he was not himself made Ejector to defend the title.*

One is not bound to give a Release unto the Sheriff for moneys which he receives from him, which he levyed for him by vertue of an Execution; but he must give him a note under his hand, that he hath received it. *Hill.* 1650. *B. S. By* Rolle *Chief Justice.* Q. tamen, *whether he be bound to give him such a note, for the Sheriff is an Officer of the Law, and upon payment of the money, the Law gives him his discharge.*

Recital and Misrecital.

If a Statute be Misrecited in pleading in a matter which goes to the ground of the Action, which is brought upon the Statute, it is not helped after a Verdict, by the Statute of *Jeofailes*; but if it be Misrecited onely in a circumstancial matter, and which goes not to the ground of the Action, it is helped after a Verdict by that Statute. *Trin. 1650. B. S. For the Statute helps onely matters mispladed in matter of form, and not matters of substance.*

Report.

By the custome of the Court, the Secondary ought not to make any report (of any matters referred unto him by the Court) upon the last day of the Term, for that day is properly appointed for motions onely. *Trin. 1650. B. S.*

Reversion.

If one have a Reversion expectant upon a Lease for years, he may make a Lease of this Reversion unto the Lessee for years, for one year, and after make a Release in Fee to the Lessee for years of the Reversion, and by this conveyance, the Reversion in Fee will pass to the Lessee. *Mich. 1650. B. S.*

Reference.

Matters of Fact betwixt the party, in a cause depending in Court, are not to be Referred to the Secondary, for such matters are tryable by the Jury that is to try the cause, but matters concerning the due proceedings, or undue proceedings in the cause by

by either of the parties are properly to be Referred into him, and for him in some cases to compose the differences, and in others to make his report to the Court how the matters do stand. *Pasc.* 1650. *B. S.*

If a matter in difference, betwixt the Plaintiff and the Defendant be referred to the Secondary, and one of the parties will not attend at the time appointed, to hear the business referred; the other party may proceed in the Reference alone, and get the Secondary to make his report without hearing of the other party. *Trin.* 1651. *B. S. For one party cannot compell the other to attend; and therefore such References would many times take no effect for want of the presence of both parties, if a report may not be made notwithstanding one of them refuseth to attend.*

Right.

Lands between the high water Mark, and the low water Mark do appertain to the Lord of the Manor next adjoyning, of Common Right. *Pasc.* 23. *Car. B. r.* By Rolle. *Q.* tamen, *whether they do not rather belong to the King, for it hath so been held.*

Scire Facias.

ONe may have a *Scire Facias* to revive a Judgement upon which no Execution was taken, if it be but seven years past since the Judgement was had, without any motion to the Court for it, and if it be under ten years since the Judgement was had, a *Scire Facias* may be moved for to revive it at the side Bar, but

but if it be above ten years since the Judgement was had, a *Scire Facias* may not be had without moving the Court for it. *Pasc. 24. Car. B. r. But the Court will not deny it, if it be moved for. The side Bar is a place where a rail or bar is set up near to this Court below the Court in* Westminister-hall, *where the Judges stand and rise themselves before the Court sits, and where they put on their Robes, and put off their Robes; and there is another like it by the Common Pleas, and it is called the side bar, because it is on one side of the Court, and not in the face of it.*

A *Scire Facias* to revive a Judgement, ought not to be granted, if the Record be not in the Court where the Judgement was obtained. *Trin. 24. Car. B. r. For the Record is the Warrant for the Scire Facias.*

A *Scire Facias* ought to be directed into the County where the original Action was brought, upon which the Judgement to be revived by the *Scire Facias* was obtained. *Trin. 1650. B. S. 23. Car. B. r.*

A *Scire Facias ad audiendum errores* is not well brought before the Record of the Judgement be certified into the Court, to reverse which, the Writ of Error was brought. *21. Car. B. r. For there is no record in Court to warrant the granting of it.*

If one sue out two Writs of *Scire Facias* one after the other, there ought to be seven dayes distance between the first and the second *Scire Facias. Mich. 21. Car. B. r.*

The return of the second *Scire Facias* ought to bear date at the return of the first *Scire Facias. Mich. 21. Car. B. r.*

A *Scire Facias* ought to be as short as possible, because

because it is the nature of Writs to set forth things very briefly, and a Writ is therefore called a brief from the Latin word *breve*, which signifies short or compendious. *Mich.* 21. *Car. B. r.*

Of latter times it hath been used to make out a *Scire Facias* with a *Fieri Facias* or Writ of Execution comprised in it; and both make but one Writ, whereas anciently a *Scire Facias*, and a *Fieri Facias* were two distinct Writs or Proceſſes. *Trin.* 22. *Car. B. r. But they may make them distinct Writs at this day if they please.*

A *Scire Facias* may be traverſed before Judgement given upon it, but after a Judgement there can be no traverſe, but a Writ of Error may be brought to reverſe the Judgement, if the *Scire Facias* was not good upon which it was grounded. *Trin.* 22. *Car. B. r.*

When a Judgement is reverſed by a Writ of Error in this Court, a *Scire Facias* ſhall iſſue againſt the Plaintiff in the Judgement reverſed, to ſhew cauſe why the Plaintiff in the Writ of Error, whereby the Judgement was reverſed, ſhould not have the moneys which were recovered and levyed upon him, by vertue of the Judgement reverſed. *Mich.* 22. *Car. B. r.*

A Writ of *Scire Facias* is not an orginal Writ, but it is a Record at the time of the Caption, before it is entred at *Weſtminſter*, and an Action may be brought where the Caption is. *Paſc.* 23. *Car. B. r.*

In a *Scire Facias* brought upon a Judgement given in the Common Pleas, it is neceſſary to ſhew before what Judge the judgement was given, but it is not neceſſary to do it in a *Scire Facias* upon a Judgement

ment given in this Court. 23. *Car. B. r.*

An old Judgement may be revived by a *Scire Facias* granted upon a motion to the Court, but if a *Scire Facias* be taken out to revive an old Judgement without leave of the Court, the *Scire Facias* is not good, but is reversable. *Trin.* 23. *Car. B. r. For such a* Scire Facias *is not the Process of the Court.*

If one do not proceed upon a Writ of a *Scire Facias* within a year and a day after it was taken out, he cannot after that time proceed upon that Writ, but must sue out a new *Scire Facias*, for the old Writ is discontinued. *Hill.* 1650. *B. S.*

If an Administrator obtaines a Judgement for a Debt due to the Intestate, and the Administrator doth afterwards dye Intestate, and letters of Administration is granted to one *de bonis non*, &c. of him that dyed first Intestate; this Administrator cannot have a *Scire Facias* to revive the Judgement obtained by the Administrator of the first Intestate, but he must bring a new Action to recover that Debt. *Hill.* 1650 *B. S. For he is no wayes privy to the first Judgement.*

Statute.

He that will take advantage of a Statute by pleading it must shew in his pleading, that he is within some Proviso of that Statute, if the Statute which he pleads, be a particular Statute, and not a general Statute. 21. *Car. B. r* 25. *H.* 7. *f.* 1. *For the Judges are bound to take notice of general Statutes which concern all the people; but not of particular which do only concern particular persons or places.*

The Statute of *primo Jac.* which concerns Attorneys and Solliciters doth not extend to special retainers of Attorneys and Solliciters. *Mich.* 23. *Car. B. r. For that*

that Statute is a generall Statute, and not a particular.

If an issue be joyned upon a Collateral point, arising in the pleading, and no place is alleadged whence the venue may come, this fault is helped after a Verdict, by the Statute of *Jeofails*; but if the issue be not joyned upon a Collateral matter, it is not helped by the Statute, if no place be alledged.

The Statute which concerns the returning of Juries doth onely extend to Juries to be returned to any of the Courts at *Westminster*. *Mich.* 23. *Car. B. r.*

The Statute of 23. *H.* 8. c. 5. concerning Sewers, was made for the ease and benefit of the people, to wit, the Defendants who are prosecuted upon that Statute, and they may plead that Statute or not plead it at their election. *Hill.* 22. *Car. B. r.*

If one acknowledge two Statutes upon his Lands one after the other, and satisfie the former Statute, and the Conusee of the latter Statute, take out an extent upon the Lands; this extent may be avoided untill the former Statute be avoided by a *Scire Facias*. *Hill.* 22. *Car. B. r.* *For the Law is not to take notice of private acts done between the parties.*

A Statute which is made onely in affirmance of the Common Law, that is, that doth not enact any new thing, but doth onely enact that which was provided for by the Common Law before the act made, is nevertheless a Statute, and may be pleaded as a Statute, although the Defendant hath a plea at the common Law. *Pasc.* 23. *Car. B. r.*

The ancient Statutes were made upon the Petition of the Commons in Parliament unto the King, and passed not by Bill, as now they do. *Pasc.* 23. *Car. B. r.*

A Statute acknowledged upon Lands, is a present duty, and ought to be satisfied before an Obligation, which

which is not so. *Mich.* 23. *Car. B. r. For a Debt due upon an Obligation is but a chose in Action, and recoverable by Law, and not a present duty.*

It was held by this Court 5. *Car.* in *Simons* Case, that the Statute of 1. *Maria*, was repealed by the Statute of 1. *Eliz.* But *Quære*, for it was doubted by the Court, whether it be repealed in the whole, or in part onely. *Mich.* 23. *Car. B. r.*

The Statute of 21. *Jac.* of *Jeofailes*, which is to help defects in pleadings, doth extend to all inferior Courts, as well as to the superior Courts, for it is a beneficial Law for the people, and shall therefore be expounded largely, and not with a restriction. *Pasc.* 24. *Car. B. r.*

The misrecital of a Statute in pleading, in a thing which doth not concern the ground of the Action which is brought upon the Statute, is helped by the Statute of *Jeofailes*. *Trin.* 1650. *B. S.*

Although a penal Statute shall not be extended to equity in the exposition of it, yet it shall be so expounded, that the true intent and meaning of it may be known. *Mich.* 1650. *B. S. For if the former should be, the exposition would be too large and arbitrary, and if the latter should not be, the exposition would be too narrow, and would extenuate the force of the Statute.*

Satisfaction.

Satisfaction pleaded to an Obligation which appears to be of a thing which was performed before the date of the Obligation, is not good. *Mich.* 22. *Car. B. r. For the date of the Obligation shall not be intended to be after the sealing and delivery of it.*

Moneys

Moneys that are to be paid by an Executor, by vertue of a Decree in Chancery, are not to be satisfied by the Executor before a Debt due upon an Obligation made by the Testator, and grown due after the death of the Testator. By *Rolls* Chief Justice. *Trin.* 23. *Car. B. r.*

Whether a Legacy given by the Testator, or a Covenant entred into by him in his life time, and broken in the time of the Executor, shall be first satisfied. *Trin.* 23. *Car. B. r.* Q. *In* Eales *and* Lambert's *Case.*

A Guardian may acknowledge Satisfaction upon Record, for the Infant unto whom he is Guardian, for a Debt, which as Guardin he hath recovered for the Infant. *Trin.* 23. *Car. B. r. For it is reason that he that hath power given him to recover a Debt, should have power to discharge the party of whom it is recovered, when he hath received it.*

The ancient course of this Court was, that if the Defendant will make the Satisfaction for that which he is sued for, to the intent that the Court may cause the Plaintiff to cease his prosecution, and may receive the Satisfaction offered, that the Defendant should come into Court before he pleads, and tender Satisfaction, or else the Court would not receive this tender, nor order any thing in it. *Hil.* 1650. *B. S. But now if the Defendant do offer this Satisfaction after he hath pleaded, the Court will not utterly reject it, but will upon the prayer of the party, refer the matter to the Secondary to end the matter, the Defendant making full Satisfaction for the principle matter, and for costs and dammages suffered and expended by the Plaintiff in the suite.*

Sheriff

Sheriff and Under-Sheriff.

In some cases the Court will order the Sheriff to attend the Secondary of the Office, with his Book of Free-holders of the County where the Land in question doth lye, that an indifferent Jury may be returned for a tryal at the Bar. *Mich.* 22. *Car. B. r.*

A Sheriff is not bound to return a Writ directed unto him, except the party whom the Writ doth concern, do tender him his Fees for the executing of it; that is in such cases where he is allowed Fees. *Mich.* 22. *Car. B. r.* Q. de ceo. *For the very words of the Writs do enjoyn the Sheriff to make a return of them.* Mich. 22. Car. B. r. *So that it seems he is to return them, whether the parties concerned do call on him or not; and if he be not paid his Fees, where he is allowed to take them, he may recover them by an Action.*

A Sheriff out of his Office cannot be fined by the Court, but a Tipstaff may be sent for him to bring him in to answer this misdemeanor committed by him when he was in his Office. 22. *Car. B. r.*

The old Sheriff of a County, is Sheriff untill the new Sheriff be sworn, although he be chosen. *Hil.* 22. *Car. B. r. For the taking of his oath doth compleat him in his Office.*

The Under-Sheriff ought alwayes to have his Deputy to be attendant in Court, to receive and execute their commands, and to give account of businesses which may fall out concerning the Sheriff. *Hil.* 22. *Car. B. r.*

Both the Sheriffs of the City of *London*, are in Law

Law but one Sheriff, and one of them is not onely Sheriff of *Middlesex*, and the other Sheriff of *London*, or one the Kings Sheriff, and the other the City Sheriff, as it is commonly said. 11. *Feb. Hill.* 1650. *B. S.*

Every Sheriff ought to answer for the misdemeanors of his Bailiffs. *Trin.* 1651. *B. S. For they are his servants, and ought to be under his Government.*

Suggestion or Surmise.

A Suggestion made to the Court, that the thing for which it is libelled in the Admiralty against the party, was done *infra Corpus comitatus*, where as in truth it was done beyond the Seas, is notwithstanding a good Suggestion, for the Court to grant a prohibition unto the Admiralty upon, for it is but to try the jurisdiction of the Admiralty, and not the merits of the cause; and if it be false, the Plaintiff in the Admiralty may joyn issue upon it, and try it at the Law, and if the Verdict pass for him, the Court will grant a consultation that he may proceed in the Admiralty. *Mich.* 22. *Car. B. r.*

Matters of Record ought not to be stayed upon the bare Suggestion or Surmise of the party; but there ought to be an Affidavit made of the matter Suggested, to induce the Court to ground a Rule for staying the proceedings upon the Record. *Mich.* 1650. *B. r.*

Surrender.

If Lessee for Life, do accept of a Lease for years, it is a Surrender in Law of his Lease for life. By

Rolle. Pasc. 24. Car. B.r. For if it should be otherwise, the Lease for years would be made in vain and to no purpose, for both the Leases cannot stand together, and where things may have an operation by a reasonable construction in Law the Law will support them.

Supersedeas.

If a Writ of Error be brought, there ought not to be a Supersedeas granted to him that brings the Writ of Error, to stay Execution upon the Judgement which is to be reversed by the Writ of Error, untill he that brings the Writ of Error, have put in special Bail, to pay costs and dammages, if the Judgement be not reversed by the Writ of Error, but affirmed. *Trin. 24. Car. B.r.*

It is very hard to compell the party that brings a Writ of Error, to take out a Supersedeas, into all the Counties where he hath Lands or goods lyable to the Execution upon the Judgement; for the reversing whereof, the Writ of Error was brought. *Mich. 1650. B. S. By* Rolle *Chief Justice. Yet it is a sure way for him that doth bring the Writ of Error to doit, to avoid trouble and charge, which may otherwise befall him by executing the Judgement, if he have a virulent and malicious adversary.*

After a Writ of Error is brought and allowed by the Court where the Judgement was given, for the reversal whereof, the Writ of Error is brought, the hands of the Court are forecloſed, that is, stopped from proceeding upon the Judgement any further, and there needeth no Supersedeas to be directed unto them, nor is it necessary to mark the Rolle. *Mich. 1649. B. S. For every one ought to take notice of such gene-*

general Writs as may any Wayes concern them.

If a Writ of Error be brought to reverse a Judgement given upon a *nihil dicit*, the bringing of this Writ of Error, is a Supersedeas to stay Execution upon the Judgement, notwithstanding the late Statute that enacts that a Writ of Error shall be no Supersedeas to stay Execution upon a Judgement. *Pasc.* 1651. *B. S.* 13. *Maii. For that Statute onely extends to Judgements given upon a Verdict, and not to Judgements given upon a* nihil dicit, *or upon a* non sum informatus, *or upon a* demurrer.

Surprisal.

The Court is alwayes very cautious that no person, that hath any cause depending before them be Surprised, especially in such matters as are finall and penall to the party that is surprised. *Mich.* 1649. *B. S. Because by Surprisals, the parties Surprised, are deprived of making their full defence.*

Setlement.

If one hath hired a dwelling house in one Parish, and be setled in that house but a small time; yet this is such a setlement in the Parish where the house is that the Justices of the Peace have no power to make an order to remove the party setled out of the Parish wherein he was so setled; except the party so setled be lame or blind, or likely to be suddainly chargeable to the Parish where he was so setled. *Mich.* 1650. *B. S.* 11. *Nov.*

Tryal and Proceedings to it.

NOtice to an under-tenant of a house or land, that there is a Lease of Ejectment sealed and delivered to Try the title of the thing of which he is in possession, is no good notice in respect to the upper tenant thereof, or to him in reversion whose title is properly concerned; and therefore if there be a Tryal, and a Verdict, and a Judgement, in such a case where there was notice onely given to the under-tenant as aforesaid, the Court upon a motion and proof of this matter, will vacate such a Judgement as a fraudulent Judgement. *Hill. 21. Car. B. r. For it is deceitfully obtained as to him in the reversion whose title is concerned in the Judgement.*

No tryal ought to be had at the Bar, the same Term that the Defendants plea is put in, but the Term following by the Rules of the Court. *Hill. 21. Car. B. r. Except it be by special rule of Court, or in causes depending on the Crown side, wherein the King is a party.*

This Court will grant a *Habeas Corpus* to Try a Felon at the Bar, although the Felony was not committed in the County of *Middlesex*, if there be not a Gaol Delivery in the usual manner in the County where the Felony was committed. *Hill. 21. Car. B. r. This is done for the expedition of Justice, and that the prisoner may not lye long in prison, for the Law favors liberty.*

A Tryal in that Court where the issue Tryed was not joyned, is not a good Tryal. *Hill. 21. Car. B. r. For there was nothing before them to Try, and so it was* Coram non judice.

Where

Where the Plaintiff will not Try his cause in such due time as he ought to do, by the Rules of the Court the Defendant may upon warning given thereof to the Plaintiff proceed to the Tryal of it himself. *Hil. 21. Car. B.r. That he may free himself from the Action that is brought against him.*

Justices of Peace may by there Commission Try a murder committed in the County where they are Justices. *Pasc. 22. Car. B.r. But they do not often do it, but leave such matters to be Tryed by the Justice of the Gaol Delivery at the Assizes.*

If any of the Defendants Witnesses to be used at a Tryal, do live above fourty miles distant from *London*; the Plaintiff by the Rules of the Court ought to give the Defendant fourteen dayes notice of the Tryal before he Try his cause. *Pasc. 21. Car. B. r. That the Defendant be not surprised for want of sufficient time to get his Witnesses to be at the Tryall.*

Upon a Tryal at the Bar, when the Jury is at the Bar, and the Court ready, and the panell of the Jurors names is delivered to the Secondary, he bids the cryer call the Defendant, which he doth, and if his Councel say they appear, then the Secondary bids both parties take heed to their challenges, and then proceeds to swear the Jurors; but if he do not appear after thrice calling by the Cryer, the Plaintiffs Councel do pray the Court the Verdict may be taken by default. *Trin. 24. Car. B.r. It is called a Verdict by default, because if it pass against the Defendant, where the Defendant had right, and might have defended himself; it is not the fault of the Court or Jury, but his own, that would not appear and defend his cause.*

Where a Tryal is had by proviſoe, the Plaintiff may be called before the Jury is ſworn, if the Defendant do reqnire it. *Trin. 22. Car. B. r. For the Plaintiff is as it were in the place of the Defendant, becauſe the cauſe is brought to a Tryal by the Defendant.*

The Court will not grant a Tryal at the bar, except there be oath made, that the matter to be Tryed is very difficult, or of great value. *Mich. 22. Car. B. r. In which caſes it is fit the Tryal ſhould be at the Bar, where Tryals are more ſolemn, and where more time may be ſpent in the Tryal then can be at the Aſſizes.*

After a Tryal hath been in a cauſe, the Court ought not to order that there ſhall be a new Tryal of it, except it doth appear that there was a ſurpriſall in the Tryal had, or ſome fraudulent miſcarriage in it; for if they might in any caſe they pleaſe, order a new Tryal, this would be for the Court to have an Arbitrary power, which the Law will not permit. *Mich. 22. Car. B. r. For this would weaken the Common Laws to the prejudice of the people.*

Where warning is given of a Tryal to the Atturney in the cauſe, and the Atturney cannot give notice of this warning timely enough for his Clyent to prepare for the Tryal, the Court will not force the Atturney to go to a Tryal, but will give longer time. *Mich. 22. Car. B. r. Becauſe the Court will not ſurpriſe any perſon, and ſuch Tryals very ſeldome determine the buſineſs, but beget more trouble and charges to both parties.*

Where there ought to have been a place alleadged whence the *venue* ſhould come, and there is no place alleadged, but an iſſue is joyned, and the *venire* is

de

de corpore comitatus, and a Tryal is thereupon had; this is good Tryal, and there ought not to be a repleader. *Mich. 22. Car. B r. For here is a good pleading and a good issue joyned and well Tryed, and a repleader is to be onely where the Pleading is vicious, and hath not brought the issue in question, which was to have been Tryed.*

If the Court do know that the Jury have given their Verdict against the evidence given unto them, they may order a new Tryal to be in the case. *Mich. 22. Car. Br.* Q. Tamen, *For the Jury are upon their Oaths, and it may be they know something of their own knowledge more then the evidence which moved them to give their Verdict so, and the party against whom the Verdict is given, is not without remedy, for he may bring his Attaint against the Jury; yet new Tryals have sometimes* de facto *been awarded in such case.*

There may be a good Tryal in a cause, although the Defendants plea be ill. *Hill. 22. Car. B. r. For the Tryal depends not upon the plea, but upon the issue joyned; and if there be a good issue joyned, the Tryal is good, what ever the plea be.*

Where the Plaintiff will not try his cause after issue is joyned, the Defendant may try it afterwards when he pleaseth. *Hill. 22. Car. B. r. That he may free himself from the suit.*

When the Defendants Attorney hath told the Plaintiffs Attorney what plea he will plead, the Plaintiffs Attorney may give him warning for a Tryal, although the issue be not made up in the cause. *Hil. 22. Car. B. r. For after plea pleaded, it is in the Plaintiffs choice whether he will reply or no, for he may make up the issue when he pleaseth.*

If a cause to be tryed, be not entred into the Judges Book, before whom it is to be tryed four dayes before the cause is to be tryed, the Plaintiff may enter a *ne recipiatur* in the Judges book; that it may not be entred after that to be tryed at that time if the Defendant please. *Hill. 22. Car. B. r.*

If upon a Tryal to be had at the Bar, the Jury be not ready at the day to try the cause, the cause cannot be tryed at the Bar any other day of that Term, without the consent of both parties. *Pasc. 23. Car. B. r. For it would be too long to keep the Witnesses in Town to another day; and if they should go out of Town, it might be too short a time, and too much trouble to bring them up again the same Term.*

The agitation of a cause in one Court, is no cause to put off the Tryal of the same cause depending in another Court. *Pasc. 23. Car. B. r. For the proceedings of one Court of Law, ought not to clash with the proceedings of another Court, but it is not so betwixt the Courts of Law and the Chancery, as it is a Court of equity.*

The King may try his own cause in what Court he pleaseth. *Pasc. 23. Car. B. r. By his prerogative; for they are all his Courts, and it is not reasonable he should be streightned in his choice where he will proceed.*

A local matter generally, is not to be tryed in a foreign County, but in the County where the cause of Action ariseth. *Pasc. 23. Car. B. r. For there may the best knowledge of the matter be had, and it is also for the greater ease of the people, and less charge.*

If one be committed to the Gaol for one Felony, yet the Justices may try him for another Felony, for which

which he was not committed. *Trin. 23. Car. B. r. By* Bacon *Justice.*

A Decree in *Chancery* shall be tryed by a Jury and not by it self, for it is not a Record, but it is a Decree recorded. *Mich. 23. Car. B. r. And there is difference betwixt a Record and a thing recorded, for a Record is a Judgement or other act recorded, done in a Court of Record, but the* Chancery *as it is a Court of equity, is not a Court of Record, but an arbitrary Court, although it be a Court of Record as touching things agitated in the pettibag Office.*

Although the Plaintiff after issue joyned, and at the Assizes where he was to try his cause, do enter a *retraxit*, yet he may try the cause at the next Assizes after if he please, for the *retraxit* doth onely import, that he intends to forbear to try his cause, *hac vice* onely; and if he do not try it at the next Assizes after, then the Defendant may, if he will, try it by proviso; and if the Defendant do not then try it by proviso, the Plaintiff may give new notice of a Tryal to the Defendant, and try it at the next Assizes following. *Mich. 23. Car. B. r.*

One that is not served with process to give his testimony at a Tryal, may not be examined upon a *voire dire* concerning any matter which concerns the Tryal. *Mich. 23. Car. B. r.*

A Tryal at the Bar ought not to be had for houses lying within the City of *London*. *Mich. 23. Car. B. r.*

If the Plaintiff give notice to the Defendant that he will try his cause that Term, although it be not tryed at the day appointed, yet he is not bound to give new notice of a Tryal, if he try it any time within that Term, for one notice is sufficient for the

the whole Term. *Hill. 23. Car. B. r.*

According to the old use of practice in this Court, there ought to be but ten Tryals at the Bar in *Easter* Term. *Pase. 24. Car. B. r. Because Tryals at the Bar are a great hindrance to other businesses which are more proper for the Court, yet now they are encreased many times to double the number.*

If there be warning given for a Tryal, and no Jury appear at the day, there ought to be a new notice given if the party will try his cause at another day. *Pasc. 24. Car. B. r.*

The consent of the owner of the Land, to make one Ejector to try the title of the Land, is good if it be not a plot betwixt him and the Ejector to oust the Lessee of the Land of his possession. *Mich. 24. Car. B. r.*

A Tryal at the Bar may not be had by the consent of the parties without leave of the Court. *Mich. 24. Car. B. r. For the Court is not bound* Ex Officio *to grant a Tryal at the Bar, but it is in their discretion to grant it, or not to grant it.*

In a Tryal for substracting of tithes in an Action grounded upon the Statute of 2. *Ed.* 6. the Plaintiff ought first to begin with the proof of the value of the Tithes, before he proceeds to shew his title to them. *Mich. 24. Car. B. r.*

It is a mis-tryal for a thing to be tryed before a Judge, who hath interest in the thing in question, and the request or consent of the parties concerned in the Tryal will not help it. *Mich. 24. Car. B. r. For such a Tryal cannot be supposed to be indifferent, for none ought to be Judge in his own cause.*

A mis tryall is helped by the Statute of *Jeofailes*, but not a voide Tryal, to wit, where there is no issue joyn-

joyned to be tryed; but in such cases there must be a repleader, that the matter in question may be put in issue to be tryed. *Mich.* 24, *Car. B. r.*

The day for a Tryal ought to be entred into the Clerks book in the Office, *viz.* the Clerk of the Papers. *Mich.* 1649. *B. S. And before it be so entred, there ought not to be notice given at the Tryal.* Q. Tamen.

One that is a priviledged person in this Court, ought not by reason of his priviledge onely, to have a Tryal at the Bar granted unto him, but there must be difficulty in the matter to be tryed, or else it must be of great value. *Hill.* 1649. *B. S.* 4. *Feb.*

A Tryal at the Bar ought not to be granted before the Defendant hath pleaded, and issue be joyned. *Hill.* 1649. *B. S.* 11. *Feb.* 12. *Feb.* 1656. *For before that the cause is not ready for a Tryal, nor doth it appear that the parties intend to proceed to Tryall.*

Of latter times there hath been twenty Tryals granted to be at the Bar in *Easter* Term, but not above. *Pasc.* 1650. *B. S.* 1. *Mail. But anciently not above half the number.*

Although the Defendant do go to a Tryal without sufficient notice given unto him of the Tryal, and there be a Tryal accordingly, this Tryal is not binding unto the Defendant, but he may (if he please) have a new Tryal granted for want of due notice. *Pasc.* 1650. *B. S.* 19. *Ap. For the Rules of the Court are not to be broken by the consent of the parties.*

By the ancient practice of the Court, all the Tryals at the Bar which are had in *Easter* Term ought to be tryed a fortnight before the end of the Term.

Pasc.

Pasc. 1650. *B. S.* 1. *Maii. And the remainder of the Term was to be spent in other businesses more proper for the Court.*

In ancient times there were wont to be Tryals in Parliament by Juries, but of latter times no such Tryals have been. *Pasc.* 1650 *B. S.* 24. *Maii.*

The prosecutor in an information brought in this Court, ought to bring the cause to a Tryal at his own costs, but in an Endictment which is solely at the sute of the King, he that is Endicted must bring the cause to a Tryal at his own charges. *Pasc.* 1650. *B. S.* 24. *Maii. An information is preferred as well for the benefit of the informer as the King, and therefore it is reason he should bring it to Tryal at his own charges.*

If at a Tryal the Court do see that one of the parties is surprised, but not by any fault or laches of his own, but by some other casualty, they may in their discretion put off the Tryal to another time, until the party surprised may be better provided for his Tryal. *Trin.* 1650. 3. *July. B. S. For this is not to delay justice, but to give time that clearer justice may be done.*

In criminal causes, Tryals may be at the Bar in *Hilary* Term, and in *Easter* Term, but not in other causes. *Mich.* 1650. *B. S. But onely in* Michalemas *and* Easter *Term. This was the old course, but of late in some special cases, Tryals have been granted to be at the Bar in* Hilary *Term, and* Trinity *Term.*

The Court of *Chancery* will not stay a Tryal at Law by an injunction, when the parties are ready for the Tryal, and have expended their costs for the Tryal; but after the Tryal they will grant an injunction

ction to stay Judgement. *Pasc.* 1652. *B. S.*

If the Plaintiff, in an Action of Trespass and Ejectment, do bring his cause to be tryed at the Bar, he cannot compell the Defendant to confess the Lease, Entry, and Ouster, for the Tryal at the Bar was not granted in favor of the Defendant, but of the Plaintiff; but if the Defendant bring the cause to be tryed at the Bar, there he must confess the Lease, Entry, and Ouster, because the Tryal was granted to be at the Bar in his favor. *Pasc.* 1652. *B. S.*

If a cause be appointed to be tryed in one Term, and the Plaintiff doth not then proceed in his Tryal, but rests for a year or more after, if he will after so long time try the cause, he must give the Defendant a whole Terms notice before his Tryal. *Pasc.* 1652. *B. S.*

If a Tryal be had the last day of a Term, Judgement cannot be entred upon that Verdict untill the next Term after. By *Rolls* Chief Justice. 1652. *B. S. Nor till the four first dayes within the Term be passed, for so long time hath the Defendant by the Rules of the Court to speak in arrest of Judgement.*

It was said by *Rolle* Chief Justice, that the City of *Bristol* will not bring a matter to be tryed here at the Bar, no more then the City of *London* will. 1654. *B. S.*

If at a Tryal at the Bar, in a Trespass and Ejectment, the Plaintiff and the Defendant do consent, that the Jury shall have a view of the Lands in question, there can no Tryal proceed in the cause that Term. By *Rolls* Chief Justice. 1654. *B. S.*

It is not usual to grant a Tryal at the Bar the same Term it is moved for, but the next Term after. 1654. *B. S. Yet sometimes upon special reasons it is done.*

A voluntary Affidavit made before a Master of the Chancery is not to be given in evidence at a Tryal at the Bar. *Pasc.* 1655. *For a Master of the Chancery hath not authority to administer such an Oath, and therefore if the party did swear falsly, it is not perjury, nor can he be endicted for it, because it is* Coram non judice; *and therefore such oaths are of little credit to be given in evidence.*

If a Tryal be had, and a Verdict thereupon given, the same issue may not be tryed again by the Jury that tryed it before. 1655 *B. S. For it is more than probable they will give the same Verdict.*

Traverse.

A Traverse ought to have an inducement to make it relate to the foregoing matter, or else it is not good and formal. *Mich.* 22. *Car. B. r.*

If the Court shall change the *venue*, and lay it in a County where the cause of Action did not arise, the party may Traverse the County if he please, and so draw the *venue* into the right County where the cause of Action did arise. *Trin.* 23. *Car. B. r.*

If one will take a Traverse to a Declaration, he ought to Traverse that part of it, that the doing thereof will make an end of the matter for which the Plaintiff declares, and then is the Traverse good. *Pasc.* 24. *Car. B. r.*

Where the Defendant hath given a particular answer in his Plea to all the material matters contained in the Declaration, there he needs not to take a Traverse. *Pasc.* 24. *Car. B. r. Pasc.* 1648. *B. S. For a Traverse is a denyal of a thing, and when a thing is answered, what need is there of a denyal of it?*

Where there is a Disseisin, and a descent alleadged in

in a Declaration, if the Traverſing of the Diſſeiſin will make an end of all the matter, there the Diſſeiſin is to be Traverſed, and not the deſcent, that is, in ſuch caſes where by ſuppoſition the party may come to the eſtate by Diſſeiſin. *Paſc.* 24. *Car. B. r.*

Where the Defendant hath confeſſed and avoided all the matter that is contained in the Declaration, there he needs not to take a Traverſe. *Paſc.* 24. *Car. B. r. For a confeſſing and avoiding is a full anſwer of the matter alledged, and ſo there needs no Traverſe of it.*

Title.

If there be an Inquiſition found, by which the King is Intitled unto Lands, and the Inquiſition is not anſwered nor Traverſed, the Lands found in the Inquiſition, ſhall be ſuppoſed to be in the hands of the Kings. 21. *Car. B.r. Becauſe there appears nothing to the contrary to queſtion the Kings Title.*

If one be admitted to traverſe an Office, this admiſſion of the party to the traverſe doth ſuppoſe the Title to be in him. 21. *Car. B. r.*

If in an Action of Treſpaſs and Ejectment, neither the Plaintiff nor the Defendant can make out a good title, then the party that hath had the moſt ancient poſſeſſion of the Lands in queſtion, ſhall be judged to have the beſt Title. *Paſc.* 23. *Car. B. r. Mich.* 1649. *B. S. For an ancient poſſeſſion of Lands is a badge of a Title to them.*

In Action of Treſpaſs brought for taking away of goods, the Plaintiff needs not ſet forth his Title to the goods *Paſc.* 23. *Car. B. r. For by the bringing of the Action, and by the Declaration it is ſuppoſed*

posed that they were in his possession, before the Defendant took them away from him, and that possession is Title enough to maintain the Action.

He that is made Ejector to try the Title of Land, is not bound to defend the Title of the Land, if he whose Title is truely concerned, will not save him harmeless if the tryal shall pass against him; but he may confess a Judgement and save himself of the trouble which otherwise may befall him by being made Ejector. *Mich.* 1650. *B. S.*

The Officer of this Court, whose title was to be called the Clerk of the Crown, is now called and Intitled Coroner and Atturney for the Keepers of the Liberty of *England* by Authority of Parliament. *Mich.* 1650. 24. *Oct. B.S. But now that Title is also altred, and he is called Coroner and Atturney for the Lord Protector.*

Tenement.

A Tenement may be said to be any House, Land, or other such like thing which is any way held or possessed; and it is a word of a very large and ambiguous meaning, and therefore not fit to be used to denominate or express any thing which requires a particular description. 21. *Car. B. r.*

Tipstaff.

The Court will not grant an Attatchment against an Officer of the Court for a misdemeanor committed by him as an Officer of the Court, but one of the Tipstaffs which are Officers of this Court, called by that name, by reason of a staff which they carry tipped with silver, is to bring him into the Court. 21. *Car. B. r. And they are in the nature of Messengers or Pursuivants, &c.*

If

If a Sheriff do commit a misdemeanor in relation to the Court during his Office; and afterwards a new Sheriff is elected, whereby the old Sheriff is out of his Office; the Court may grant a Tipstaff to bring him in to answer the misdemeanor; for being out of his Office, the Court cannot fine him for his misdemeanor. *Pasc. 24. Car. B. r.*

A Tipstaff is to be granted for one that is in *London* or *Westminster*, but if he be in the Country, an Attatchment is to be granted, and not a Tipstaff. *Hill. 22. Car. B. r. & 23. Car. & Pasc. 1650. For the Tipstaffs are Officers to attend the Court, and are not therefore to be sent out of Town.*

Treason.

An intention of Treason, if it can be proved by circumstances, is Treason in the eye of the Law. *Trin. 22. Car. B. r. To shew the odiousness and greatness of the offence of Treason, by punishing the very intentions of it; which are not punishable in other offences criminal.*

Time.

Where the Law doth not imply a certain Time for the doing of a thing, nor is there any certain time agreed upon between the parties for the doing it; there the Law doth allow the party a convenient Time for the doing of it. *Mich. 22. Car. B. r. To wit, such as shall be adjudged reasonable.*

In some cases one hath time during his life, for the doing of a thing, if he be not hastened to do it by request of the party for whom it is to be done, but if he be hastened by request, then he is bound to do it in convenient Time after such request made. *Hill. 22. Car. B. r.*

Trespass.

An Action of Trespass doth lye for him that hath the possession of goods or of a house or Lands, if he be disturbed in his possession. *Mich. 22. Car. B. r.*

If goods be taken by the Sheriff in Execution, and the goods be rescoued out of his hands, an Action of Trespass lies against him that did rescue the goods. *Hill. 22. Car. B. r. viz. By the Sheriff, or by the party at whose sute they were taken, and the party may be endicted for a rescous also, at the sute of King for disturbing the peace and hindring the Execution of the Law.*

One Action of Trespass may be brought for a Trespass committed in Lands which lye in several Towns or Vills. *Pasc. 23. Car. B. r. So that those Vills do lye in one and the same County.*

An Action of Trespass doth lye for a Parson against him that doth take away his Tithes after they are set forth. *Pasc. 23. Car B. r. For after they are set forth, the person hath a property in Law in them, although the Parson never had an actual possession of them.*

If divers Actions of Trespass be brought for one and the same cause, with an intent onely to vex the Defendant, if the Court be moved in it, and proof thereof made by Affidavit, the Court will order the Plaintiff to joyn all his Actions into one. *Pasc. 23. Car. B. r. For the Judges of the Law do not favor unjust vexations of the people.*

If one do carry another with force into the house of a third person, he who carries the other by force into the house, is the Trespassor unto the third person.

son, and not he who is carryed thither by force, and so if one do drive my cattel into the ground of a third person, he that drives my cattel into the ground, is the Trespassor, and not I, who am owner of the cattel. *Mich. 23. Car. B. r. For one shall not be made a Trespassor against his will.*

If a person of goods be rescued out of the hands of the Sheriff which he hath taken in Execution by vertue of his Office, it is at his election to bring an Action upon the Case, or an Action of Trespass, *vi & armis*, against him that made the rescous. *Hill. 23. Car. B. r.*

If one bring a meer Action upon the Case, he may declare omitting the words *vi & armis*, but if the Action be a bare Action of Trespass, there he must declare that the Trespass was committed *vi & armis*. *Mich. 24. Car. B. r. For an Action of Trespass doth implye a breach of the peace, and a* capiatur *is to be entred in the Judgement against the Trespassor for his fine to the King, but in an Action upon the Case it is otherwise, for there the Judgement is, that the Defendant shall pay the damages, and be in misericordia.*

Trespasses of several natures cannot be laid together in one Action. *Mich. 24. Car. B. r.*

Upon a recovery of Lands in an Action of Trespass and Ejectment, the Plaintiff may afterwards bring an Action of Trespass against the Defendant, for the mean profits of the Land. So it was held in the case between *Wilmot* and *Holden*. *Trin 1692. B. S. The mean profits are such profits of the Land as did grow due betwixt the time of the bringing of the Action and the time of the recovery.*

An Action doth lye at the Common Law, for the per-

person for taking away of Tithes after they are severed from the Land. *Mich. 24. Car. B. r. To wit, against the occupyer of the Land.* Quæ tamen.

Tales.

Upon a Tryal at the Bar, if the Jury do not appear full, the Court cannot grant a Tales, *de circumstantibus*, but the Court upon a motion will grant a *Tales* returnable in some convenient time the same Term to try the cause. *Mich. 22. Car. B. r. 1650. B. r. For the Statute doth not extend to tryals at the Bar, which did enable the making of a* Tales. *A* Tales de circumstantibus, *are so many persons which are returned to serve on Juries to supply the places of those that did not appear.*

A Corporation Court cannot grant a Tales. *Pasc. 23. Car. B. r. For the Statute doth not extend unto Corporations.*

A *Tales* is not to be granted where the whole array or Jury, is challenged for want of Hundreders, but in such case the whole pannel, if the challenge be made good, is to be quashed, and a new Jury is to be returned. *Mich. 1650. B. S. For a* Tales *consists but of some persons to supply the places of such of the Jurors as wanted of the number of twelve, and is not to make a new Jury.*

If the Sheriff take Bail of one for his appearance, who is not Bailable by Law, although the party do not appear, an Action doth not lye against the Sheriff; but the Plaintiff must proceed against the Sheriff by way of amerciements. *Mich. 1650. B. S. 26. Nov. For in regard that the Sheriff ought not to have taken Bail, though he have taken it, yet it shall be accounted as if he had not taken Bail.*

Terms.

Terms.

The Iſſue Terms, are *Hillary* Term and *Trinity* Term onely, the other two Terms are not ſo called, and the other Iſſue Terms are ſo called, becauſe in them are the Iſſues joyned and made up, which are to be tryed at the Lent Aſſizes, and the Summer Aſſizes which do immediately and reſpectively follow them. *Hil.* 22. *Car. B. r.*

The four dayes in Term are the day of, 1. *Eſſoigne.* 2. *Exception.* 3. *Appearance.* 4. *Return.* } *Hill.* 22. *Car. B. r.*

All the Term in conſtruction of Law is accounted but one day, and therefore a Plea that is put in the laſt day of a Term, is a Plea of the firſt day of the Term. *Trin.* 23. *Car. B. r. Mich.* 1649. *B. S.*

The Term is ſaid to begin upon the firſt Eſſoign day, which is three dayes before the Courts of Juſtice do ſit, and not at the firſt day of ſitting of the Courts. *Trin.* 24. *Car. B. r. Becauſe ſome buſineſſes of that Term do begin at that time.*

The ſame day of the week that *Michaelmas* Term doth end the ſame day *Hillary* Term doth begin. By *Woodward* Clerk of the Court. *Hil.* 24. *Car. B. r.*

Toft and Croft.

A Toft is a place where an old houſe did formerly ſtand, and it alſo ſignifies a decayed houſe not inhabited. *Paſc.* 23. *Car. B. r.*

A Croft is a ſmall peices or cloſe of Land, that lyes neer a dwelling houſe. *Paſc.* 23. *Car. B. r.*

Trover and Conversion.

Where the Trover of goods is one County, and the Conversion is in another County, the Action brought for these goods may be laid in the County where the Conversion was, for the Conversion of the goods is part of the cause of the Action. *Pasc. 23. Car. B. r. For the very name of the Action is called a Trover and Conversion, and not a Trover onely, and the Action is brought, as well for the Defendants converting of the goods to his own use, as for the finding and detayning of them.*

Two causes of Action for a Trover and a Conversion cannot be joyned in one Action. *Trin. 23. Car. B. r.*

An Action of Trover and Conversion may be brought for goods, although the goods for which the Action is brought, do come into the possession of the Plaintiff that brings the Action before the Action brought. *Pasc. 1651. 22. Ap. B. S. For the coming of the goods into his possession before the bringing of the Action for them doth not purge the wrong, or make satisfaction for that, which was done to the Plaintiff, by the finding and converting the goods, and so he hath still cause of Action, although his dammages may not be very great.*

Trust.

The *Chancery* will compell one to perform a Trust which he hath taken upon him, except it be a Trust taken upon him for the benefit of an Alien. *Pasc. 23. Car. B. r. For to compell that might (in many cases) prove prejudicial to the Common wealth, and repugnant to the Common Law.*

The

The way of making conveyances by way of Truſt, was invented to evade the Statute of uſes. *Paſc. 23. Car. B. r.*

Ceſtuy que truſt, cannot take the profits of the Land ſetled by the Truſt, but hath onely his remedy for them in equity, for the eſtate in the Land is onely in the party that hath the Truſt. *Trin. 23. Car. B. r.*

Tenure.

Lands which are granted by the King, to hold of him of his Manor of Eaſt-*Greenwitch* in *Kent*, *in capite*, is a Tenure in Socage, and the words *in capite* in the grant are voide. *Trin. 23. Car. B. r. For thoſe words are repugnant to the Tenure created by the grant.*

Tender.

A Tender of Rent to ſave the forfeiture of a Leaſe, ought to be a Tender of the whole Rent, due at the time of the Tender, without any deduction of Taxes of Parliament or other payments. *Trin. 23. Car. B. r.*

Tithes.

The rector of a Church ſhall be accounted the proprietor of the Tithes of that Pariſh, to which the Church doth belong, if the contrary be not ſhewed. *Trin. 24. Car. B. r.*

Tithes of Land which do not lye in an Pariſh, do properly belong to the King. *Mich. 24. Car. B. r. For that which no Subject can juſtly claim, is the Kings.*

Lands which lye in a Foreſt, and are in the hands of the King, are free from paying of Tithes, although

they do lye within some Parish; but if they be disaforested, and come into the hands of another, they ought to pay Tithes: for the not paying of Tithes for them, whilst they were in the Kings hands is but an immunity for the time, and not an absolute discharge. *Mich.* 24. *Car. B. r.*

Tithes are not due to be paid *Jure Divino*, but *per legem terræ*, so held by the Court, agreeing with *J. Seldens* History of Tithes. *Mich.* 1649 *B. S.*

If Lands paid no Tithes before the Statute of *Ed.* 6. or but very inconsiderable Tithes, and afterwards the Lands for which the Tithes were paid are improved by the owner, he shall onely pay the accustomed Tithes paid for them before the improvement of them, to wit, for the seven last years immediately preceding the improvement, but if no Tithes were paid for them before the improvement, no Tithes shall be paid for them after the improvement. 1650. *B. S.*

Venue and Venire Facias.

A *Venire Facias* ought to be *de aliquo vicineto*, that is, neighborhood, and there if the Writ of *Venire* do say *Venire Facias homines Burgi*, it is not a good *Venire*, for it ought to be *Venire Facias homines de Burgo.* 21. Car. B. r. ℣ Differentiam inter *of* and *from*.

If a special Verdict be imperfect in matter of substance, there must be a new *Venire* that there may be a new Verdict found, because the ill Verdict doth not give the Court power to Judge of the matter in Law, and so it is also if a demurrer upon an evidence be not good

good. By *Rolle. Mich.* 22. *Car. B.r. & Trin.* 23. *Car. B.r.* Q.

A *Venire Facias* that is filed, cannot be altered without the consent of the parties. *Mich.* 22. *Car. B.r. For the filing of it doth make it a Record.*

In an Action of Trespass and Ejectment, the *venue* ought to be from the Vill or Hamlet, where the Lands in question do lye; and if the Lands lye in no Vill or Hamlet, the *venue* ought to be *de corpore Comitatus*, that is from the body of the County. *Mich.* 22. *Car. B. r.*

The Judges may alter the *venue* from the place whence by the Law it ought otherwise to be, if they believe there cannot be an indifferent tryal in the County where the *venue* was first laid. *Mich.* 22. *Car. B. r. By reason of the great power that one party hath in the County, or for some other cause.*

Where the *venue* cannot be from a Vill, Hamlet or *lieu conus*, there it may be *de corpore comitatus. Mich.* 22. *Car. B.r. For if it might not be so, the cause could not be tryed.*

A *lieu conus*, is a Castle, Mannor, or other notorious place well known, and generally taken notice of by those that dwell about it, and not a close or Pasture ground, or such like place of no repute. *Mich.* 22. *Car. B. r.*

In all cases where there is to be a special Jury, there the *Venire Facias* must be special. *Mich* 22. *Car. B.r. For ordinary forms are not applicable to extraordinary cases.*

If the matter to be tryed be within divers places in one and the same County, the *Venire* shall be general, but if the matter be in divers Countries, there the *venire* ought to be special, *Mich.* 22. *Car. B. r.*

For

For the general form of a venire *doth not warrant to return a Jury in one cause out of divers Counties; but in such cases to prevent the failer of Justice, the Court hath power to vary from the old forms.*

Where a certain place cannot be known whence the *venue* should be, the *venue* is to be *de corpore comitatus*, and so it is where a custom of the County is to be tryed; for the custom runs through the whole County. *Hill. 22. Car. B. r. And therefore may be indifferently tryed by Jurors returned from any part of the County.*

A fault in a *Venire* is helped after a Verdict by the Statute of *Jeofailes*, but where the *venire* is wholly insufficient, it is not helped, for the Statute extends not to such *venires. Hill. 22. Car. B. r.*

After a Plea pleaded, and an issue joyned in the cause, the *Venire* cannot be amended, except the parties consent to it, *Hill. 22. Car. B. r. Pasc. 24. Car. B. r. Trin. 24. Car. B. r.*

If the *venue* be laid in a foreign County, and the parties proceed to issue in the cause, the Court will not change the *Venue* afterwards, although the Defendant would try the issue afterwards by proviso. *Pasc. 23. Car. B. r.*

Where the Verdict is imperfect, so that Judgement cannot be given upon it, there must be a new *venire* to try the cause *de novo. Mich. 23. Car. B. r. For the former tryal is to no purpose.*

If a matter in Law be depending undetermined, and an issue also joyned in the cause, there must be a special *venire* awarded, *tam ad tryandum exitum quam*, &c. *Hill. 23. Car. B. r.*

It is not necessary to enter the *venire facias* before the tryal, but the Plaintiffs Attorney ought to give a Copy

Copy of it unto the Defendants Atturney before the tryal, if he desire it; and after the tryal it may be entred. *Pasc. 24. Car. B. r.*

A *Venire de vicineto Civitatis*, is good without naming of the Parish within the City, out of which the Jurors are summoned, and so was it said to be adjudged in *Gavell* and *Gippes* case, 10. *Jacob.* contrary to the book of 5. *H.* 5. *For a City may have but one Parish in it.*

The party that will move to have the *venue* changed, he must move for it the next Term after the Action is brought. *Trin.* 23. *Car. B. r.*

This Court ought not to change the *venue*, so that by it, the cause cannot be tryed within the jurisdiction of the Court. *Trin.* 23. *Car. B. r.*

If the Defendant will move to change the *venue*, he must make oath that the cause of Action, if any be, did arise in the County where he would have the *venue* laid, and not in the County where the Plaintiff hath laid his Action; and the Defendants Atturney or his Clerk must make oath that he received the Plaintiffs Declaration after the precedent Term and not before. *Trin.* 23. *Car. B. r. Or else the Court will not change it.*

Where an Action is brought for a real thing which is called a real Action, the *venue* ought to be laid in that County where the thing is for which the Action is brought. *Hill.* 23. *Car. B. r.*

The Court will not change the *venue* in an Action brought upon an obligation. *Hill.* 23. *Car. B. r. Because the Action is personal and transitory, and it is at the election of the party to lay it where he pleaseth, yet the rules of Court for the laying of personal and transitory Actions have not been very constant of latter times but the Courts do vary as they see cause.*

[A

A Judgment given in an inferior Court, was reversed here by a Writ of Error, because the *Venire* was *Venire facias*, &c. and not at large. *Hill.* 1650. *B.S. But such a* Venire *in the Common Pleas is good: For the constant course there, is to enter the* Venire *briefly with an* &c.

The Defendant may move to alter the *Venue*, although the Plaintiffs Declaration be not perfect. *Mich.* 1650. 25 *Oct. B.S. For though it be not perfect in all things, yet it may be so perfect that he understands where the* Venue *is laid, and that is enough to ground a motion upon to alter it, if it be laid where it ought not to be.*

In an Action of Debt brought for Rent due for Land, the *Venue* may not be laid out of the County where the Land lies for which the Rent is due: for the Action is a locall action, *ratione terræ*, out of which the rent is issuing. *Hill.* 1650. *B.S.* 29 *Jan.*

A *Venue* cannot be laid in *Wales* in a transitory Action, the Cause whereof did arise in *England*; because this would be to remove the Cause to be tryed out of the jurisdiction of the Court, and then this Court can give no judgment in it. *Trin.* 23. *Car. B. r.*

The *Venue* cannot be changed after the Defendant hath pleaded, although the Plaintiff have amended his Plea in a principall and materiall part of it, after the Defendant put in his Plea, and though the Defendant do imparle by reason of that amendment, for all this makes it not a new Declaration. 1650. *B. S.*

A *Venire* out of an inferior Court ought to runne thus; *Ideo præceptum est in eadem Curia*, or, *per eandem Curiam.* Hill. 1649. B.S. 30. Jan. *But now those*

Latine

Latine Words must be in English.

It is not necessary to insert the Names of the Jurors in the *Venire facias*, although it was the antient course to do it. *Hill.* 1649. *B.S.* 4. *Feb. So that antient forms may be altered upon good reason, else not.*

Where the Declaration is good, but the Plea is uncertain, and yet an Issue is joyned and tryed upon it, this is a mis-tryall; for there can be no judgment given upon it: and therefore there must be a Repleader and a new *Venire* to summon another Jury to try the Cause again. *Hill.* 1649. *B.S.* 8. *Feb.*

A *Venire facias* is oftentimes returned before the Plea be entred, and yet it is well enough. *Pasc.* 1650. *B.S.* 24. *Maii. For the Plea is a Plea before it is entred, so that there is an Issue to be tryed, which is a sufficient warrant for awarding and returning of the Venire.*

A *Venue* is not to be changed in an Action of Debt brought for Rent, or upon an Obligation, or in an Action of Covenant, or in an Action of Accompt. *Trin.* 1650. *B.S.* 26. *Junii. Mich.* 1650. *B.S.* 23. *Nov.*

The *Venire* ought to be delivered to the Sheriff, four dayes before the return of it, if the Jury do dwell forty miles off, and eight dayes, if they dwell further off then forty miles from the place where the tryall is to be. *Pasc.* 1651. *B.S.* 13. *Maii.*

If the Defendant do move to change the *Venue* upon Affidavit made, that the cause of Action, if any be, did arise either in *Kent* or *Surrey* (for example) and not in *London*, where the Action is laid; the Plaintiff shall have his election, to lay his Action either in *Kent* or in *Surrey*, upon giving the Defendant notice, in which of them he will lay it, but shall not

not lay it in *London*. 1651. *B.S.*

The Attorneys are sworn, not to lay personall Actions in forreign Counties, but in the Counties where the causes of them did arise; and the Statute doth also prohibit it; for the laying them in forreign Counties, doth put the people to charge for motions to alter the *Venues* into their proper Counties; and therefore it is fit the Attorneys should observe it. *By* Rolle 1650. *B.S. But as yet the practice herein is unsetled and inconstant: And it may be it is not setled, because there might great inconveniences grow by setling of it, and tying up the hands of the Court, from doing that which the exigency of the case may require.*

Verdict.

If there be severall ejectors of severall parcels of Land mentioned in a Lease of Ejectment, the Jury ought to finde this matter especially. *Hil.* 21. *Car. B.* r.

A Verdict which is found against a Record, is a void Verdict. *Hil.* 21. *Car. B.r. For a Record is of a higher nature, and more credit is to be given unto it then unto a Verdict.*

If a Verdict may be any wayes construed, to make it good, there ought not to be made a construction of it, to destroy it and make it void, *Hil.* 21. *Car. B.r. For the Law delights in the preservation of things, and would not have things to be done in vain.*

The Court will not take a Verdict by default, except the Plaintiffs Councell do pray it. *Hil.* 21. *Car. B.r. For the Plaintiff may choose whether he will take the Verdict or no, and therefore the Court will not take it except he desire it.*

If the Plaintiff doth fail in proving of his Issue, the Verdict

Verdict ought to be found for the Defendant; except the Jury do know of their own knowledg that the Defendant is guilty. *Hil. 21. Car. B. r. So that the Jury is not forced up by the evidence, that they must alwayes give their Verdict according to it.*

If one of a Jury that found a Verdict, were outlawed at the time when the Verdict was found, the Verdict is not good but may be reversed by error. *Hil. 21. Car. B. r. For an outlawed person is out of the protection of the Law, and is debarred from intermedling with any Civil affairs, as a person excommunicated is from participating in Divine Ordinances.*

If a Verdict be found for the Plaintiff, and he will not enter it, if the Defendant move the Court in it, they will compell him to enter it: and so it is where the Plaintiff doth refuse to enter a Verdict found for him, upon the executing of a Writ of enquiry of Dammages. *Mich. 22. Car. B. r. For the Plaintiff ought to rest satisfied with what the Law gives him: Or the Defendant may enter it himself if he will.*

A Declaration that is not good, is in many cases helped after a Verdict, by the Statute of *Jeofailes*, but where the Declaration doth not make it appear that the Plaintiff had some cause of Action to warrant his Declaration, or where some material and essential part of the Declaration is omitted, such Declarations are not helped by the Statute. *Mich. 22. Car. B. r. & Hil. 22. Car. B. r.*

If a special Verdict be drawn up contrary to the notes agreed upon by the Councel on both sides at the tryal, the Court upon a motion, will rectifie this if the parties cannot agree between themselves to do it, or that the Councel on both sides did formerly consent

consent to such an alteration. *Mich. 22. Car. B. r.*

If the Court do direct the Jury to finde a speciall Verdict upon the prayer of the Plaintiff or of the Defendant, the party at whose prayer the special Verdict was found, ought to prosecute this special Verdict that the matter in law in it may be determined. *Mich. 22. Car. B. r. Because the Verdict was directed to be so found in his favour.*

Where the Court doth direct the Jury to finde a special Verdict, one of the Councel on both parts are to agree upon the notes for it, and to draw them up, and to set their hands to them, and to deliver them in unto the Jury in convenient time, or else the Court will take a general Verdict. *Mich. 22. Car. B. r.*

The Chief Justice may in some special case take a Verdict out of Court, but then the Verdict must afterwards be pronounced in Court. *Mich. 22. Car. B. r.*

If a matter in fact be left out in the notes drawn up by the Councel of the special Verdict found by the Jury, this cannot be amended afterwards, though the Court be moved in it, and although the Councel on both sides do consent. *Mich. 22. Car. B. r. For this were for the Court and Councel to make a new Verdict against the finding of the Jury, who have found the matter of Fact already.*

If one of the parties whom a special Verdict doth concern, will not joyn with the other in prosecuting of the special Verdict, the Court upon a motion will order him to joyn in it; and if the Verdict be made up, and the party will not bring it in to be entred and proceeded in, the Court will grant an Attachment against the party. *Mich. 22. Car. B. r.*

The

The Plaintiff and Defendant ought both of them to appear in Court to hear a special Verdict, and the Jury is to be called, and to have the special Verdict read unto them by the Secondary, and upon the reading of it, if there be any mistake in the penning of it, the Councel on either side hath liberty to except against it, and when the Councel is agreed, then the Secondary demands of the Jury whether they agree to find it so, and if they answer they do, then the Verdict is found. *Pasc. 23. Car. B. r.*

If the Jury will find against the directions of the Court any thing in matter of Law, the Court will not receive the Verdict, but compell them to find, as the Law requires. *Pasc. 23. Car. B. r. For the Court is judge of matters in Law, as the Jury is of matters of fact.*

If in an Action upon the Case brought for speaking of scandalous words, the Jury do find that the Defendant did speak words which are Actionable against the Plaintiff, and so give a Verdict for the Plaintiff, and it appears that the words found are not expressed in the Declaration, this is not a good Verdict, if there be not other words found which are in the Declaration which are actionable. *Trin 23. Car. B. r. For the words in the Declaration are onely put in issue to the Jury.*

A special Verdict after the notes are agreed upon by the Councel, and drawn up, and their hands set unto them, is not a special Verdict, untill it is allowed by the Court. *Mich. 23. Car. B. r. For they are to judge whether the matter in question be rightly stated or not.*

Where a Verdict is imperfectly found by the Jury, there the Defendant is not to move upon it in arrest

of Judgement, for there cannot be any Judgement given upon such a Verdict, and by consequence the motion is needless; but in such case there ought to be a new *venire* to summon a new Jury to try the cause again. *Mich.* 23. *Car. B. r.*

Where a special Verdict is imperfectly drawn up and entred; the Judges will not argue the matter in Law; for there can be no Judgement given in the cause, by reason that the Verdict is not good, but in such a case there must be a new *venire* that a new Verdict may be found. *Hill.* 23. *Car. B. r. Mich.* 1649. *B. S.* 13. *Nov.*

A cause depending in Court upon matter in Law, found by a special Verdict, ought not by the ancient practice of the Court to be read in Court as a Record, untill books thereof be given unto the Judges of the Court, and so is the use in the Exchequer at this day. *Pasc.* 24. *Car. B. r. That the Judges may have sufficient time to consider of, and to speak to the matter in Law.*

A misdemeanor of the Jury before they give their Verdict, is not a sufficient cause to make voide the Verdict. *Pasc.* 24. *Car. B. r. although they are punishable for it.*

If a Verdict be given where there is no issue joyned; this is a *Peofails*, and there can be no Judgement given upon such a Verdict, but there must be a repleader to bring the matter to a tryal. *Pasc.* 24. *Car. B. r. For there was nothing tryed before for want of an issue joyned.*

A special Verdict ought to be prepared by Counsel; and delivered to the Jury to consider of before they deliver their Verdict in private to the Judge and not the next morning when the Jury come to deliver their Verdict openly in Court. *Pasc.* 1650. *B. S.*

2. *Mail.*

2. Mali. For then the Court cannot expect till they consider of it.

In criminal causes, if there be any errors in the proceedings, they are not helped after a Verdict, by the Statute of *Jeofailes*. *Pasc.* 1651. *B. S.* 11. *Mali.* For the Statute mentions not criminal matters, and it shall not be extended to equity, because it is in abridgment of the practice of the Common Law.

Although the Court do bid the Secondary Record a non-suite, yet if be not Recorded, the Court may take the Verdict afterwards. *Trin.* 1651. *B. S.* For the non-suite is no non-suite before it be recorded.

If the Plaintiff and the Defendant do consent to have the Jury find a special Verdict, the Jury ought not to refuse to finde it. *Trin.* 1652. *B. S.* Q.

A Verdict by default is found in this manner, in an Action of Trespass and ejectment. When the Jury is ready at the Bar to try the cause, the Secondary bids the Cryer call the Defendant, which he doth thrice; and if he do not appear, the Plaintiffs Councel do pray the Court to take the enquest by default, thereupon the Jury is sworn, and the Record is read unto them, then the Plaintiffs Councel do open the Record unto the Jury, and prove the Lease of Ejectment, and cause it to be read, and then open the Plaintiffs title; and if no evidence be given for the Defendant, the Jury find for the Plaintiff, and give him dammages and costs of Suit. 1654. *B. S.*

If the Jury find a matter specially, and do conclude a thing which can not stand and agree with their finding, the conclusion is idle, and shall be taken to signifie nothing. By *Rolle* Chief Justice. 1654. *B. S.* For the Verdict was perfect without the conclusion, and therefore an idle and impertinent thing shall not vitiate a good Verdict.

The Jury may find a matter of Record, if it be very ancient, or if the Record be embezeled or cannot be found upon search made for it; notwithstanding what is held in Scholasticas case to the contrary, although the Record be not shewed to the Jury. By *Rolle* Chief Justice.

Valuation.

A Jewel is not Valuable, but according to the Valuation of the owner of it, and is very incertain. *Hil. 21. Car. B. r.* Q. Tamen, *For it seems there is a certain Value for Pearls and Diamonds, amongst the Merchant Jewellers, according to their weight, bigness, and luster.*

If one declare in an Action of Trespass, for the taking away of live cattel, he ought to say that he took away his cattel *pretii* so much, but if he declare for taking away of things without life, he ought to say *ad valentiam* of so much. *Mich. 1649. B. S.* Q. *Differentiam inter pretium & valentiam, or price and value.*

Use.

A Use and a Trust were all one at the Common Law, and did both rest in privity, but are now distinguished by the Statute of 27. *H.* 8. *Mich. 23. Car. B. r.*

The limitation of a Use was at the Common Law but a matter in equity, and the party concerned was onely relievable upon it in Chancery. *Mich. 22. Car. B. r.*

Feoffments to Uses, have the same acception as Deeds at the Common Law have, and are not to be interpreted as Wills are. *Mich. 23. Car. B. r.*

It

It is all one whether a Use be raised by way of Covenant, or by way of Feoffment. *Mich.* 24. *Car. B. r.*

Privity of estate and confidence in the party, are the two great pillars by which Uses are supported. *Pasc.* 1650. *B. S.* 18. *Mail.*

Usury.

Where there is not a Usurious contract preceding, although he that lendeth money, do take more then eight pound *per annum*, *per centum*, upon a just computing of the moneys received by him, whether it fall out by the miscasting of the parties, or by the mistake of the Scrivener, this is not Usury forbidden and punishable by the Statute. *Trin.* 22 *Car. B. r.*

Threescore pounds was reserved payable upon a Morgage of Lands for three years, payable at every six moneths by equal portions, whereas the whole Use money for three years, for the moneys lent upon the Morgage according to the Statute, came but in the whole to sixty pounds, and yet this adjudged to be no Usurious contract. *Mich.* 23. *Car. B. r.*

Voide and Voideable.

A thing is Voide which is done against Law at the very time of the doing of it, and such a thing done shall binde no person: but a thing which is only voidable, and not absolutely void, is a thing which he that did it, ought not to have done it, yet when it is done, he that did it cannot avoid it, but it may be made void by his Heir, *&c.* 21. *Car. B. r.*

A Leaſe which is only Voidable, muſt be made Voide by re-entry: but where a Leaſe is abſolutely voide, there needs no re-entry. 22. *Car. B.r.*

Vill.

The Conſtable of one Vill cannot execute his Office in another Vill. 24. *Car. B.r. For every Vill hath a particular Conſtable or Officer, and have confined power to their ſeverall limits.*

There is an antient Book called *Liber Villarum*, wherein is contained all the Vills and Pariſhes in *England*. Paſc. 24. Car. B.r. *This Book I take it is in the Exchequer.*

Variance.

If there do appear to be a materiall variance tween the matter pleaded, and the manner of the pleading of it, this is not a good Plea. *Paſc.* 24. *Car. B.r.*

View.

The Court will grant, that the Jury ſhall view the thing in queſtion for them to try, if they doubt of it, if the Plaintiff and Defendant will conſent unto it, otherwiſe not. 15. *Nov Mich.* 1650. *B. S. But the Jury muſt find, without a View, according to the light they have received from the evidence, as their conſciences ſhall direct them.*

Warden of a Church, or Church-Warden.

A Church-Warden, is a Church-Warden although he do not take an Oath, for the Oath

was

was only enjoyned him by the Bishop of the Diocess, by an usurped authority, for he is an Officer, whereof the Common Law takes notice, and was so before such an Oath was imposed upon him. *Mich.* 22. *Car. B. r.*

Waste.

If Waste be done upon Lands which are let for Term of years, or for life, by one against whom the Lessee can have no remedy in Law for committing this Waste, the Lessee is not punishable by the Lessor for this Waste, except there be a special covenant in the Lease, that he shall not commit or suffer Waste to be done. *Mich.* 23. *Car. B. r. So that a special covenant of the party doth binde him, where by the Law he was not bound. A Foreign enemy that invades the Land, and makes destruction in Lands and Houses, is such an one as the Lessee can by Law have no remedy against for Waste done by him.*

If Timber Trees be growing in the Hedges of a Field or close let for years or life, and the Lessee cuts them down, the Field shall not be forfeited in an Action of Waste brought against the Lessee, but if the Trees cut did grow scatteringly throughout the field or close, the whole field or close is forfeited by cutting them down. By *German* Justice. *Pasc.* 1650. *B. S.* 17. *Junii.* Q.

Withernam

Cattel which are taken in Withernam, *ad valentiam*, that is, to the value of the cattel that were first distrained, and so detained, that the Sheriff cannot execute the Replevin brought for them, is to be understood, not of the number of the cattel first di-

strained, but according to their full worth and value. 1651. *B. S. For else he that brings the Repliven and Withernam will be deprived of his satisfaction he ought to have in case the distress were not lawfully taken.*

Warranty.

If one Warrant a horse, or any other thing sold after the time of the sale of it, such a Warranty is not good to bind the party that made the Warranty, but the Warranty must be made at the time of the sale, and then it is binding, because it is part of the contract. *Pasc.* 1652. *B. S.*

Writ.

A Writ may be either a Mandatory Writ, or it may be a remedial Writ; a Mandatory Writ, is a Writ which is directed unto the Cinque Ports, or to some other priviledged place to enjoyn them, not to exceed their jurisdiction; but this is not a remedial writ to the party that obtains it, conducing any wayes to his obtaining of right in his cause depending there. *Trin.* 22. *Car. B. r.*

An Original Writ is not amendable, if it be erronious in substance, because he that takes it out may have a new original, and so is not without remedy. *Hill* 22. *Car. B. r. Though the Writ be abated.*

An original Writ which is defective in form onely is abateable, if it be not amendable by the Statute, as in some cases it is. and in others not. *Hill.* 22. *Car. B. r.*

If the Prerogative Court shall refuse to grant Administration according to the Testators will, this Court may grant a Writ at the prayer of the party grieved to compell them to do it; and the Countess of

of *Bark-shires* case 29. *Jac.* and the case of Saint *Burien* in *Cornwell*, were cited to prove it. *Hill.* 22. *Car. B. r.*

If one bring a Writ of Ejectment, and pending the Sute, he makes an entry into the Land for which the Action is brought, the Defendant may plead this entry in abatement of his Writ. *Hill.* 22. *Car. B. r.*

A Writ without a Teste is not good. *Hill.* 22. *Car. B. r. For the time may be material when the Writ was taken out.*

A Writ issuing out of any of the Courts at *Westminster* do not run, that is, are of no force within the County Palatine of *Chester*, or other County Palatine. *Hill.* 22. *Car. B. r. Because they have* jura regalia *within their jurisdictions, and are not subject unto other jurisdictions.*

The Sheriffs Bailiff cannot execute a Writ directed unto the Sheriff without the Sheriffs Warrant. *Pasc.* 23. *Car. And if he do, he is liable to an action.*

Where the Sheriff is Judge of the Court, a Writ which should otherwise have been directed unto him, shall be directed to the Serjeants of the Mace. *Pasc.* 23. *Car. B. r. That is, in such places where there are such Serjeants.*

After Judgement in a cause, there can no Plea be pleaded in abatement of the Writ upon which the Action was commenced. *Pasc.* 24. *Car. B. r.*

In a Writ of Dower, the Tenant cannot plead *bis petita* in abatement of the Writ of Dower. *Pasc.* 24. *Car. B. r. That is, that the Defendant hath demanded her Dower by another former Writ depending, for she can recover but once.* Q.

In an Action of Debt, it is a good plea in abatement of

of the Plaintiffs Writ, to say that the Plaintiff hath received part of the Debt, for which he Sues, since his Action brought; but it is no plea good in an Action upon the case. *Pasc. 24. Car. B. r. Trin. 24. Car. B. r. For in Debt the Plaintiff is to recover the whole Debt he declares for; but in an Action upon the case, the Plaintiff is to recover no more then he can prove he is damnified by not paying of what he demands and the money received since the Action brought, can but abate the dammages, and doth not destroy his Writ, for it was incertain at the bringing of Writ how much he was damnified.*

The Writ directed to call one to the dignity of a Serjeant at the Law is a close Writ that is sealed up to signifie it is his duty to keep close his Clyents cause and not to reveal it, but the Writ directed to one to call him to the place and dignity of Chief Justice or other Judge, is an open Writ, and not closed up to shew that his duty is to do open Justice unto all. *Mich. 24. Car B. r.*

A Writ of Error brought by the Baile to reverse a Judgement given against the Principal onely, is abateable; and so is it (by *Rolls* Chief Justice) where the Judgement was given against the Principal and the Bail also. *Mich. 1649.* Q. Tamen, *In the latter case.*

If the party be sued to an Out-lawry upon an original Writ, the Writ is determined by the Out lawry, for it hath had its full effect which was to make the party to come in and appear, and answer the Plaintiff, or else to Out-law the Defendant if he should not appear. By *Rolls* Chief Justice. *Hill. 1650. B. S.*

Where the Sheriffs Bond which he took for the Defen-

Defendants appearance is put in Sute; the Writ taken out to arrest the Defendant upon this Bond, ought to be directed unto the Coroner, because the Bond is to be sued in the name of the Sheriff. *Pasc.* 1650. *B. S.* 17. *Ap.* *And so is accounted (in Law) to be a Party.*

Writ of Enquiry of Dammages.

The Court will quash a Writ of Enquiry of Dammages, and not suffer it to be filed, if the Plaintiff do execute it without the giving of due notice of the execution thereof unto the Defendant, and put him to take out a new Writ of Enquiry. *Hill.* 22. *Car. B.* r.

If it do not appear to the Court by the Return, or by some other way, that a Writ of Enquiry hath been executed, the Court will grant the Plaintiff a new Writ (if he desire it) if the former Writ do take no effect. *Mich.* 22. *Car. B.* r.

A Writ of Enquiry is to issue forth where a Judgement is had upon a *nihil dicit*, or *non sum informatus*, or upon a demurrer, and not upon a Verdict; and this Writ is to summon a Jury to try what Dammages the Plaintiff hath sustained by the Defendant in the cause, because the dammages were not formerly assessed, the matter not being tryed by a Jury. *Hill.* 22. *Car. B.* r.

If there be error in a Writ of Enquiry of Dammages, the Court upon the prayer of the party, will grant him a new Writ, but will not suffer the old Writ to be amended. *Pasc.* 23. *Car. B.* r.

If a Writ of Error be brought in this Court to reverse a Judgement given in another Court, and the

Judg-

Judgement is affirmed in this Court, this Court may grant a Writ of Enquiry of dammages, if it was such a Judgement whereupon a Writ of Enquiry did lye. *Trin. 24. Car. B. r.*

If upon the executing a Writ of Enquiry of Dammages, the Sheriff do refuse to swear and examine some of the Witnesses produced on either part, and yet doth execute the Writ; the Court will grant a new Writ to the party grieved, for the old Writ was not well executed. 1651. *B. S.*

Way and High way.

There are three Wayes taken notice of, to wit, *Alta Via, Communis Via, & Via by prescription*, that is, a High-way, a Common Way, and a Way by prescription. *Pasc. 24. Car. B. r.*

If a High-way lye within a Parish, the Parish is of common right, bound to repair it, except it appear that it be to be repaired by some other person, either by reason of tenure, or by prescription. *Mich.* 1650. *B. S.* 24. *Oct.*

If any person do enclose any part of a Way or waste, adjoining to a High-way, he thereby doth take upon him to keep the Way adjoyning in repaire, for thereby he claims particular interest in it. 1651. *B. S.*

Wager of Law.

The Defendant cannot Wage his Law in an Action which doth arise upon a realty, but onely where the Action is personal. *Trin. 22. Car. B. r. And therefore if an Action be brought for the Arrerages of rent, the Defendant cannot Wage his Law, for the Rent doth arise*

arise out of the Land, and Sounds in the realty.

The manner of Waging of Law is this, He that is to Wage his Law, ſtands at the end of the Bar towards the right hand of the Chief Juſtice, and the Secondary askes him, whether he will Wage his Law, if he anſwers that he will, the Judges admoniſh him to be well adviſed, and tell him the danger of taking a falſe Oath, and if notwithſtanding he perſiſt, then the Secondary ſpeaks words to the effect following unto him, and he that Wageth his Law, doth repeat every ſentence diſtinctly after him, *Hear ye this, ye Juſtices, that I* W. S. *do not owe to* B. B. *the ſum of* (naming the ſum in the Declaration) *nor any penny thereof in manner and form as* B. B. *hath declared againſt me, So God me help*, and then he kiſſeth the book. But before he takes the Oath, the Plaintiff is called by the Cryer thrice, and if he do not appear, then the Defendant goes quit without taking his oath, but if he appear, then he muſt take his oath, and then he is diſcharged without pleading. *Mich.* 22. *Car. B.r. Becauſe if the Plaintiff do not appear to hear the Defendant perform his Law, he is non-ſuit.* Paſc. 24. *Car. B. r.*

The reaſon why Wager of Law is ſuffered, is becauſe the contract upon which the Action is brought being a private contract and not to be proved, it may be intended that the diſcharge may be in private, and not to be proved otherwiſe then by the Oath of the party whom the Law will not preſume will take a falſe oath. *Hill.* 1649. *B. S.* 31. *Jan.*

If one bring an Action of Debt upon a *conceſſit ſolvere*, as it is uſed to be done in *Briſtol* and ſome other places, the Defendant may Wage his Law. *Hill.* 1650. *B. S.* 5. *Feb.*

If

If the Defendant do tender his Law in Court, and is ready to perform it, and the Plaintiff being called doth not appear, he shall be non-suite and pay costs, but then he may bring another Action for the Debt if he please, but if the Plaintiff do appear, and the Defendant doth make his Law, then the Plaintiff shall never bring another Action for that Debt, but shall be barred for ever. *Mich.* 1650. *B. S.* 22. *Nov. For it is as much as if a Verdict passed against him.*

Words.

A Latin word used in pleading, which word doth signifie divers things, is nevertheless well used to express that thing which is intended to be expressed by it, if there be an *Anglice* joyned with it. *Hill.* 21. *Car. B. r. For by the word* Anglice *it is explained what the party doth intend it shall signifie in English. This was most useful to be known, when all pleadings in Law were in Latin.*

Words which may be taken or interpreted in a general and common sence ought not to receive a strained and unusual construction. *Hill.* 21. *Car. B. r. For it is likely the party that used them, had a plain and common meaning in them, and not a strained and unusual.*

Words which are in themselves uncertain, may nevertheless be made certain by subsequent or following words. *Mich.* 23. *Car. B. r.*

Although Words were not Actionable in themselves at the time of the speaking of them, yet if an Action be brought for the speaking of them, they may be made Actionable by the Defendants pleading by justifying of the Words. *Mich.* 22. *Car. B. r.*

For

For it may be that in such his justification, he may explain in what sence he spake them, which did not appear plainly before.

These Words, you are a Knave, spoken generally, will not bear an Action, but if one call another Knave, and apply the words particularly to the profession of him against whom they are spoken, as to call an Atturney at Law Knave, and to apply it specially to him in relation to his practice as an Atturney, an Action upon the Case will lye for speaking of them. *Hill. 22. Car. B. r. For by the application of them, they import a special dammage done to the party by the speaking of them.*

A word which is written short or *abreviated* without a dash is not good. *Hill. 22. Car. B. r. For the dash or turning up of a stroke or dash with a pen at the end of it, is the general mark or signe to distinguish an abreviated word from a word written at length.*

Incertain words in the Count or Declaration, may be made good and certain by a plea in Bar. *Hill. 22. Car. B. r. To wit, by the Defendants taking notice of the meaning of them in his plea.*

The different placing of the same words may cause them to have a different sence or construction. *Pasc. 23. Car. B. r.*

The Court ought so to order the words of a Will, that they may receive such a construction that may agree with Law, although by their misplacing, they cannot receive such a construction. *Pasc. 23. Car. B. r. Ut res magis valeat quam pereat.*

Words in a Will, as they may be diversly penned, may either destroy a condition, or create a condition where there was none before. *Pasc. 23. Car. B. r.*

Morage of a Ship, is when the Ship lies on the ground

ground in the More, Mire, or Mudd within a Haven or Harbor, and doth not float upon the watter. *Pasc.* 23. *Car. B. r.*

The Anfty of the City of *York*, is that part of the County of the City which extends without the City, and is a hundred, which is within the jurisdiction of the City, and was added to it by Act of Parliament. *Pasc.* 23. *Car. B. r.*

The word *relaxavit* doth not amount to a surrender in the case of a common person, much less in the case of the King. *Trin.* 23. *Car. B. r. But it amounts onely to a release, which differs much from a surrender, as appears by* Litleton *in his tenures.*

The word interest for borrowing of money, shall be intended eight pounds a year *per centum*, if the contrary be not shewed. *Trin.* 23. *Car. B. r. This was when money was at eight in the hundred, but now it shall be intended six pound in the hundred.*

The words of a Statute ought not to be so interpreted that thereby natural Justice will be destroyed. *Hill.* 23. *Car. For it is not the intent of any particular Law of a Land or Nation, to destroy the general universal Law of nature.*

The word *Simul* is not a word copulative, when it is joyned with the word *et*. *Trin.* 24. *Car. B. r. But* Simul cum, *are words copulative.*

Where there is a Latin word in a Declaration, which is falsely Englished, the English word shall be adjudged void, and the Latin word shall stand. *Pasc.* 24. *Car. B. r.* Q. Tamen.

Where senceless words which signifie nothing are used in a Declaration to express things, they shall be accounted voide and idle, and shall not hurt the Declaration if it be good without them; for no dam-

mages

mages shall be intended to be given by a Jury for those things which were intended to be expressed by those senceless words. *Pasc. 24. Car. B. r.*

The word *videlicet* is used to explain the foregoing words in the Deed or other wrighting where it is used, and if the words which the *videlicit* doth usher in, be contrary to the preceding words they are voide. *Pasc. 24. Car. B. r.*

One may upon a consideration dissolve by Paroll, an absolute contract. *Pasc. 24. Car. B. r.*

One may give authority by Parol unto another to take Livery and Seisin for him. *Mich. 1650. B. S. For he is but an instrument or Conduit Pipe, to derive the possession of the Land to another.*

Words ambiguous ought to receive such a construction as may make them stand with Law and equity. *Mich. 1650. B. S.*

A mark made in the manner following, *viz.* ∧ which is to shew where a clause or word left out and interlined in writing should come in, is called a *tra.* By *Rolle* Chief Justice. It seems to be derived from the Latin word *trahere* to draw, because by it the words left out are signified to be there where it is placed to be drawn into the writing. *1650. B. S.*

Witness.

A Witness who by reason of sickness, extreme age, or other cause cannot come to a tryal, may by order of Court be examined in the Country by a Commission out of the *Chancery*, or before any Judge of the Court where the cause depends, and the testimony so taken, shall be allowed to be given in evidence at the tryal. *Mich. 22. Car. B. r.*

If a Witness be served with the Process of this

Court to give his testimony at a tryal and will not come, the Court may grant an Attatchment against him for his contempt to the Court, and the party may have his Action upon the Case to recover the dammages he received for want of his Testimony. *Mich 22. Car. B. r.*

The testimony of one single person, is a sufficient testimony for the King in a cause wherein he is concerned. *Mich. 22. Car. B. r. To wit, in criminal causes; but Q. whether it be so in civil causes.*

A Witness that is to testifie on the behalf of the King against one that is arraigned for Felony, may not be sworn against the King to give his testimony, but the prisoner may examine him, & desire his testimony without giving him his oath. *Mich. 22. Car. B. r.*

If divers persons be made parties to a sute, and some of them are either found not guilty, or else the Plaintiff will give no evidence against them, they may be allowed to be examined as witnesses in the cause whereunto they were made parties. *Mich. 22. Car. B. r. For now it appears they are not concerned in the sute but are as strangers and indifferent persons.*

He that will make use of Witnesses at a tryal, must get them thither at his own peril, and he shall not delay the other party for lack of his Witnesses. *Pasc. 23. Car. B. r. For he hath his remedy against his Witnesses, if he suffer in his tryal by reason of their absence.*

One that hath but a small Legacy given unto him by a Will, may be allowed as a Witness to prove that will; but he that hath Lands given unto him, by a Wil, may not be allowed for a Witness to prove that Will. *Pasc. 23. Car. B. r. For that were to suffer one to swear his own title, but in the former case*

the Law will not intend that any one will forswear himself for a small matter.

It is not requisite for Witnesses to a Will, to set their hands unto it. *Pasc. 23. Car. B. r. Nor for Witnesses to a Deed to do it, but it is very prudential to do it, the better to keep things in memory.*

A man may be a credible Witnes that is one of good fame and credit, and yet by Rules of the Law, he may not be a Witnes in the cause, wherein he is produced to his give testimony. *Pasc. 23. Car. B. r. For he may be for some by respect not indifferent in that particular cause, though otherwise accounted of good credit and repute.*

One that is made Executor of a Will, is not to be allowed as a Witnes to prove that Will. *Pasc. 23. Car. B. r. For his own interest may be concerned in the proof of the Will.*

If the Councel on both sides at a tryal cannot agree what testimony a Witnes in a cause did give, the Court will examine him again. *Pasc. 23. Car. B. r. That all things may be clear and without dispute.*

Inhabitants within a Corporation, if they be not free of the Corporation, may be admitted as Witnesses for the Corporation, at a tryal which concerns the Corporation. *Pasc. 23. Car. B. r. For their interest is no way concerned, and favor is not a good exception against a Witness, although it be against a Juror.*

A Witnes may not be compelled to answer upon a *voir dire* touching a Trespass done for the doing whereof, he may himself be lyable to an Action. *Mich. 23. Car. B. r.* For *nemo tenetur prodere seipsum.*

One that is of Councel in the cause on one side, may be examined as a Witnes in it on the other side, if he be served with Process to give his testimony there-

in, but otherwise he may refuse to be examined. *Mich. 23. Car. B. r. For in the former case he is enjoyned by Law to do it, which is to be preferred before his Client, but otherwise it is a voluntary act, and it is not civil for him to do it, nor is he to be prest unto it.*

Examination of Witnesses which were taken *in perpetuam rei memoriam* ought not to be made use of at a tryal, until the Witnesses so examined be dead. *Hil. 23. Car. B. r. Pasc. 24. Car. B. r. 19. Ap. For they were onely examined for their testimonies to be made use of onely in the case of death.*

One that is any wayes concerned in the same Title of the Land in question, may not be allowed as a Witness in the cause, although he be no wayes then a party to the suit. *Pasc. 24. Car. B. r. For his testimony tends to the corroboration of his own title.*

One that claims any benefit by a Deed, may not be allowed as a Witness to prove the Deed. *Mich. 1649. B. r. In regard of his interest.*

One that is to be a Witness at a tryal ought not to be examined before the tryal, but by consent of both parties. *Hil. 1649. B. S.*

The Court will upon a motion grant a *Habeas Corpus* to have a prisoner in prison upon an Execution in the Mareschal Sea, to be at a tryal to be examined as a Witness, if the tryal be in *London*; but he that obtains the *Habeas Corpus* must carry him thither, and bring him back at his own charge and peril, that he make no escape. *Trin. 1650. B. S. 29. Junii.* Q. Tamen, *Whether it ought to be done where the prisoner is in Execution.*

If a Witness be sick, so that he cannot be at a tryal, and it is so proved by Affidavit, and that Witness hath been formerly examined upon intergatories

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in the *Chancery* in that matter upon which he is to be examined upon at the tryal, the interrogatory may be admitted to be read in evidence to the Jury at the tryal. 1652. *B. S.*

If one that hath been burnt in the hand for a Felony committed by him, and be pardoned for the Felony, he may be admitted as a Witness in a cause. By *Rolle* Chief Justice. 1652. *B. S. For by the pardon his offence is pardoned, and he is made* rectus in curia.

Will.

A *Codicil* may be added by *Paroll* unto a Will in Writing, and this *Paroll codicil* shall be put in writing, and affixed to the Will, as a *codicil*; This may as well be done as a Will in writing may be revoked by *Paroll*, as it may well be. *Hill.* 22. *Car B.r. Pasc.* 23. *Car. B.r.*

A Will which doth onely concern the bequeathing of Lands, *&c.* ought to be proved in the *Chancery*, but if it be a mixt Will, and doth concern Lands, Goods, and Chattels also, it may be proved in the Spiritual Court. *Hill.* 22. *Car. B.r.*

The probate of a Will *per testes* is no corroboration of the Will. *Hill.* 22. *Car. B.r. Although the common opinion is otherwise; for if it come in question at the Law, whether a Will or no Will, it is no evidence to a Jury to prove it a Will, because it was proved* per testes.

A Will in writing is a good Will to convey Lands, although the Will be not sealed. *Pasc.* 23. *Car. B.r. For the Statute of* 32. H. 8. *that enables to convey Lands by Will, speaks nothing of sealing, but onely of writing such Wills.*

If the Testator make his Will by Paroll, and do

give direction to put his words in writing, which is done in his life time accordingly; this is a good Will to convey Lands, although he do not afterwards declare that writing to be his Will during his Life, but if his words were not put in writing till after his death, it is not a good will within the Statute to convey Lands. *Pasc. 24. Car. B. For it was not his will in writing, during his life as it must be to convey Lands.*

If the Testator do make his Will by Parol, which is afterwards put by another in writing by his direction, and there is more expressed in the writing, then the Testator did express by Paroll, yet the Will in writing is good, as to so much of it as can be proved was expressed by Paroll. *Pasc. 24. Car. B. r. For so much of it was the Testators will, and what is expressed more shall be void.*

If a Will be made by Parol and it is afterwards put in writing, and the writing is embezeled, lost or destroyed; yet is not the Will thereby destroyed if it can be proved by witnesses. *Pasc. 24. B. r. For the Paper is not the mind or will of the Testator, but onely a Declaration and Manifestation what his mind and will was, and if that can be made appear any other-wayes it sufficeth.*

A Will by which Lands are conveyed, ought not to be kept in the Prerogative Office, for it doth properly belong to the Legatee of the Lands to support his title by, if he be questioned for the Lands. *Mich. 1649. But they may take a copy of it, and enter it into their Leiger Book.*

The Testator may if he be at that time of *sane memorye* desire another person to set his hand and seal to his Will for him, and if he do it, the Will is a good Will, though the Testator did it not himself. *Pasc. 1650. Mast. 5.*

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If one make his Will in his ſickneſs by the over opportunity of his wife, to the intent he may be at quiet, and not vexed and troubled by her; ſuch a Will ſhall be adjudged to be made by conſtraint, and is not a good Will. By *Rolle* Chief Juſtice, in the Caſe of one *Hacher* and *Newborne* tryed at the Bar. *Mich.* 1654. *B.r.* Q. Tamen, *For* Voluntas non poteſt cogi, *and it differs from the caſes of making of a Deed by Menace or Dureſs, as me ſeems.*

FINIS.